2666991

3/8

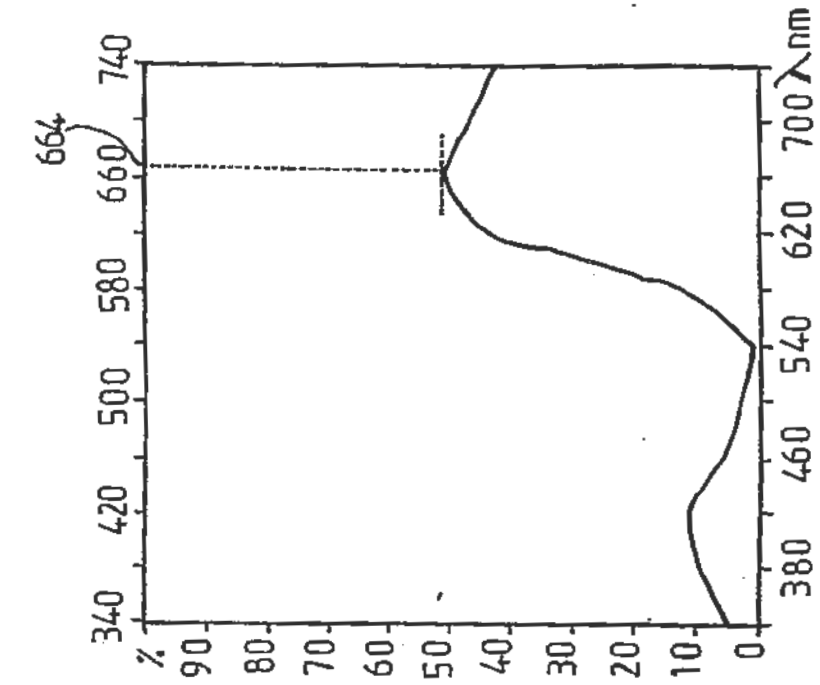


FIG5

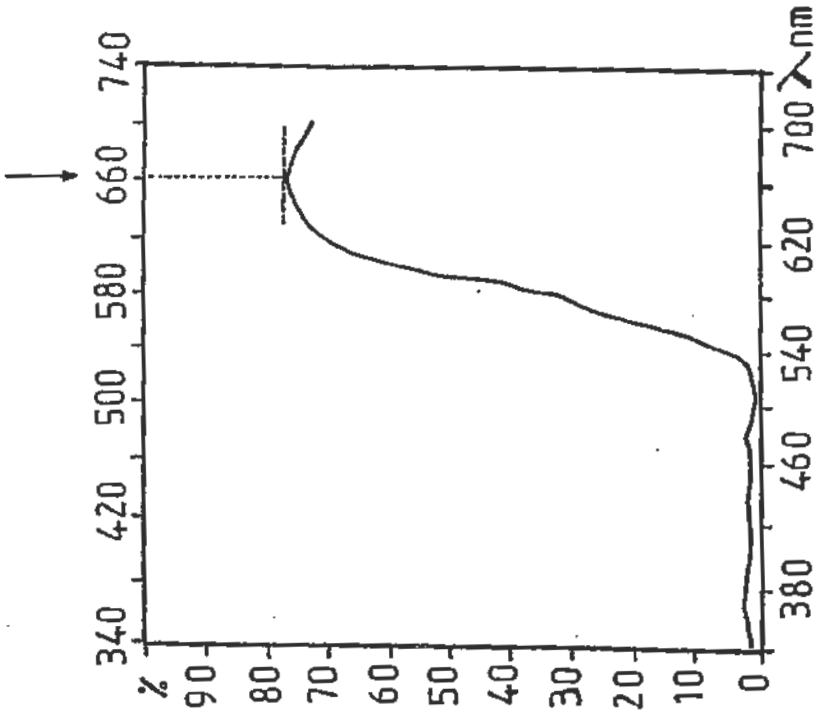
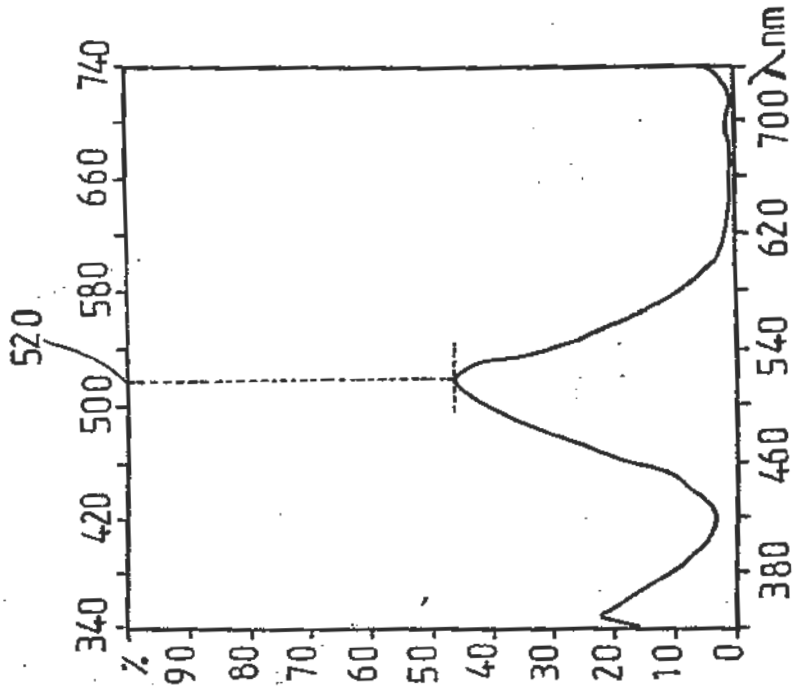


FIG4

BNSDOCID: <FR___2666991A1_I_>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λnm

FIG7

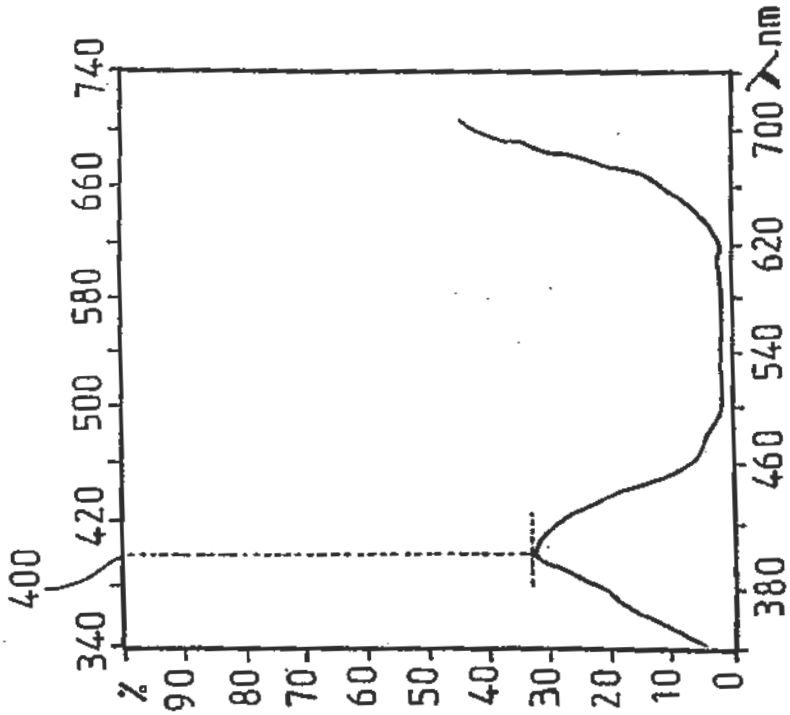
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FIG 6

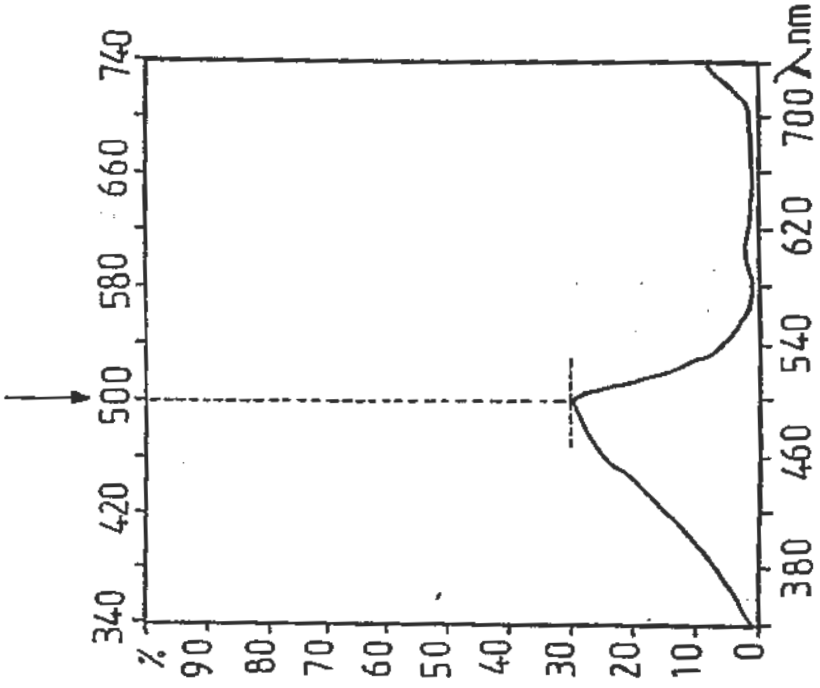
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FIG9

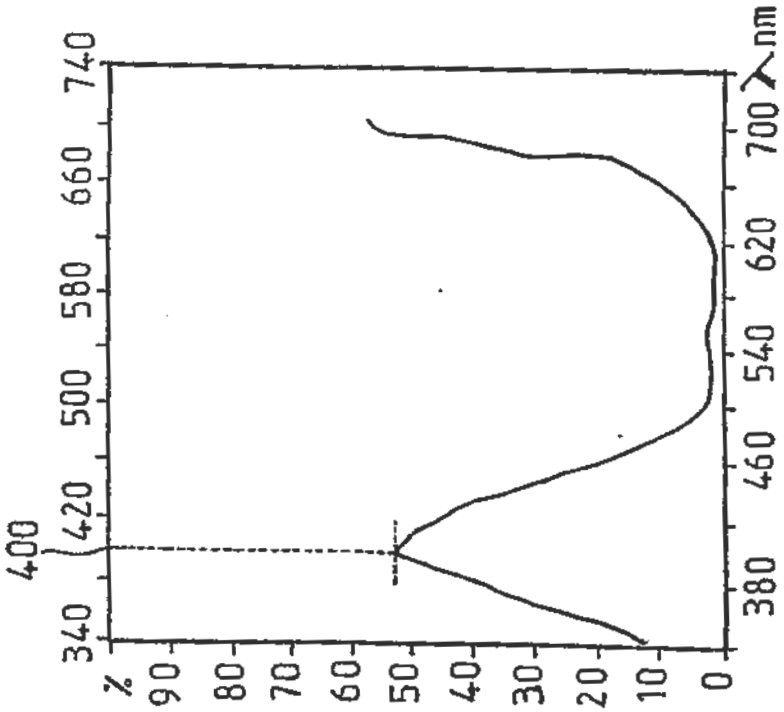
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FIG8

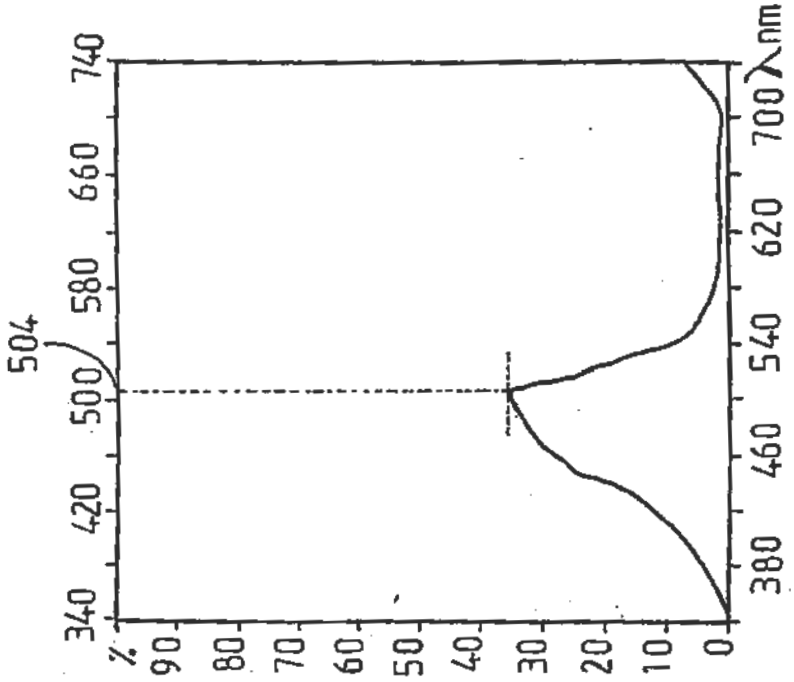
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FIG11

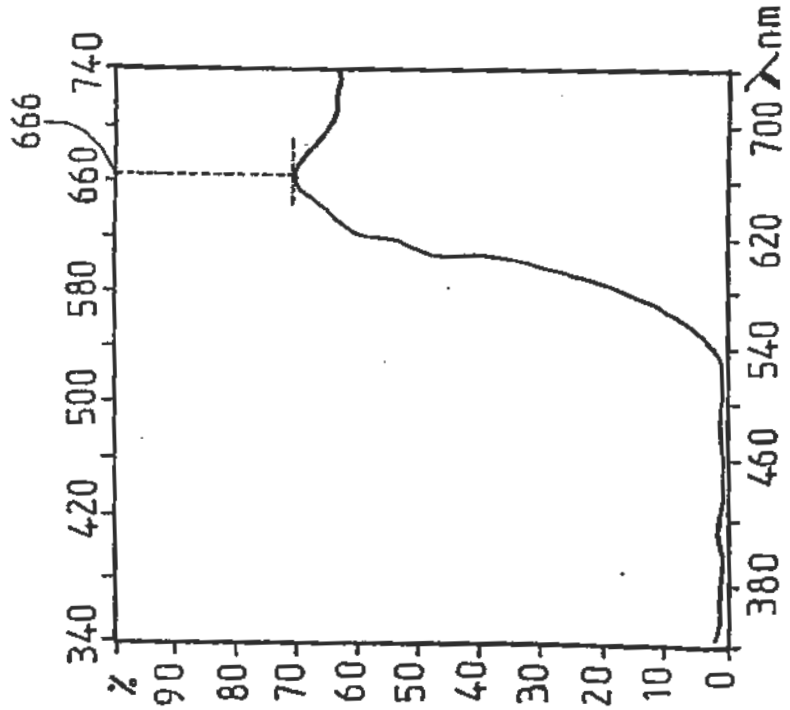
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FIG10

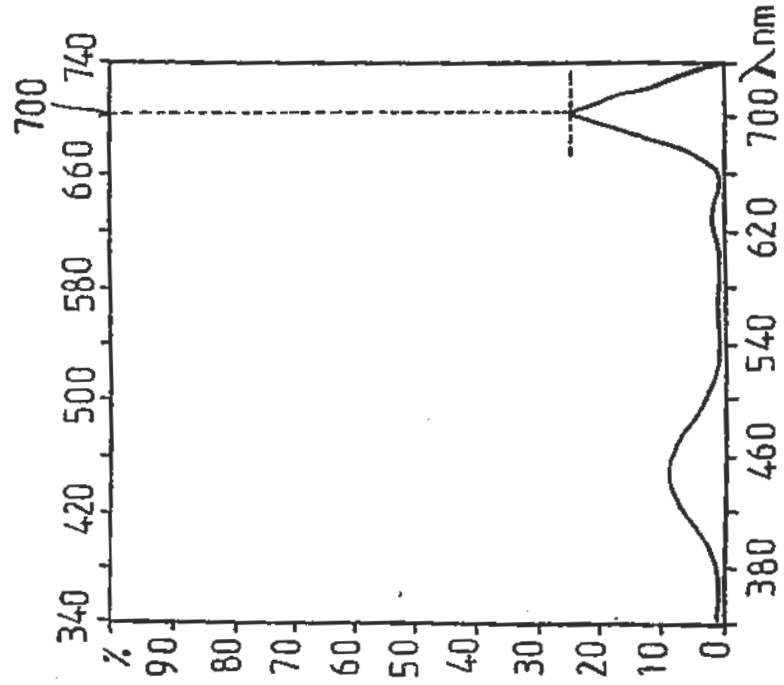
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FIG13

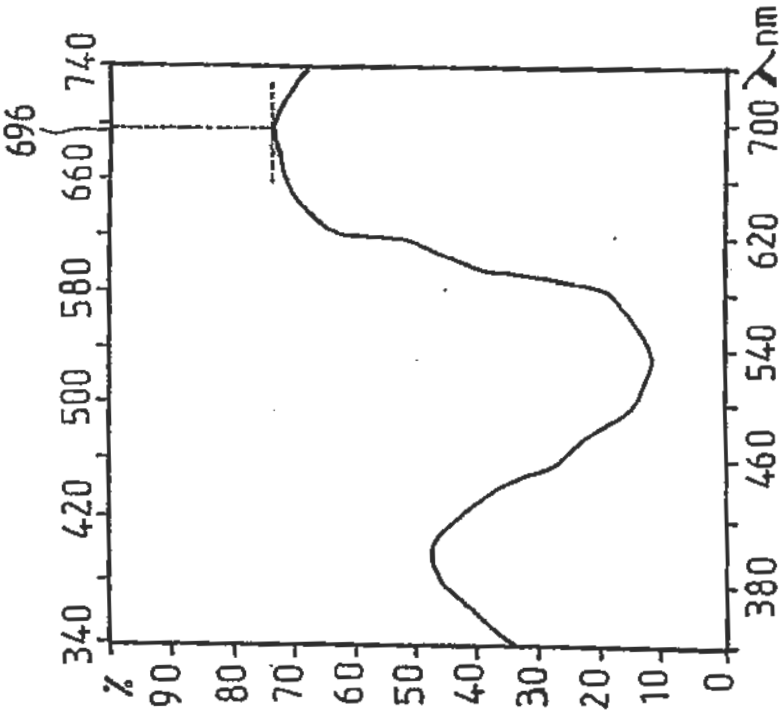
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FIG12

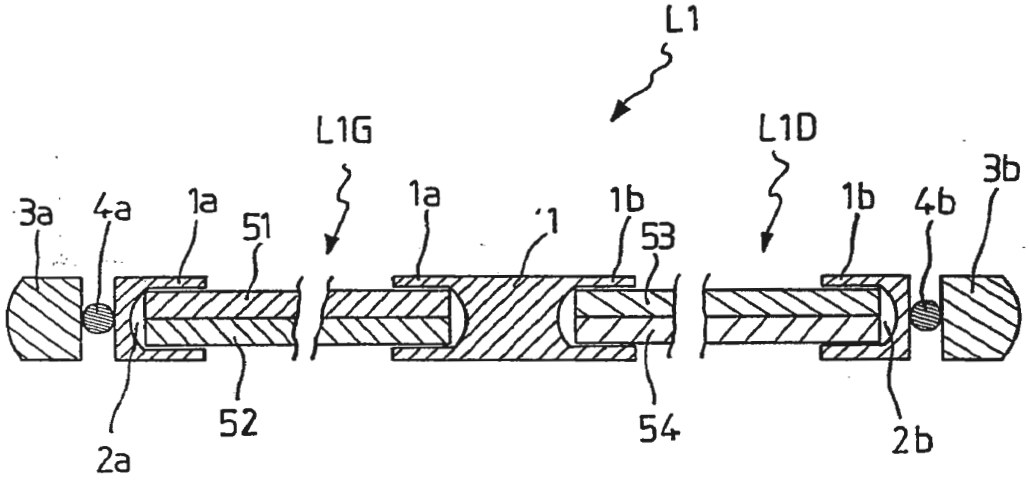

FIG 14

REPUBLIQUE FRANÇAISE

INSTITUT NATIONAL
de la
PROPRIETE INDUSTRIELLE

RAPPORT DE RECHERCHE

établi sur la base des dernières revendications déposées avant le commencement de la recherche

2666991

N° d'enregistrement national

FR 9011606
FA 451256

DOCUMENTS CONSIDERES COMME PERTINENTS

Catégorie	Citation du document avec indication, en cas de besoin, des parties pertinentes	Revendications concernées de la demande examinée
Y	DE-U-8515726 (C. LAMBERTZ) * le document en entier *	1-5, 11-13
A	---	6, 8, 10
Y	EP-A-0230393 (P. CAMUS ET AL.) * le document en entier *	1-5, 11-13
A	---	9
A	FR-A-1374837 (THE NATIONAL CASH REGISTER COMPANY) * le document en entier *	1-6, 8, 10, 11

A	FR-A-2582523 (I. CANCOIN) * le document en entier *	1-6, 10, 13

A	COLOR RESEARCH AND APPLICATION vol. 9, no. 4, 1984, NEW YORK US pages 195 - 205; P. K. KAISER: "Phototherapy using chromatic, white, and ultraviolet light" * le document en entier *	1-5, 13

DOMAINES TECHNIQUES RECHERCHES (Int. Cl.5)
A61N G02B

Date d'achèvement de la recherche	Examinateur
03 JUIN 1991	FERRIGNO A.

1

EPO FORM 1503 03.82 (P0412)

CATEGORIE DES DOCUMENTS CITES

X : particulièrement pertinent à lui seul
Y : particulièrement pertinent en combinaison avec un autre document de la même catégorie
A : pertinent à l'encontre d'au moins une revendication ou arrière-plan technologique général
O : divulgation non-écrite
P : document intercalaire

T : théorie ou principe à la base de l'invention
E : document de brevet bénéficiant d'une date antérieure à la date de dépôt et qui n'a été publié qu'à cette date de dépôt ou qu'à une date postérieure.
D : cité dans la demande
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PTO/SB/22 (08-03)
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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

Docket Number (Optional) 003252-052961

In re Application of George Brainard

Application Number 09/853,428 Filed 05/10/2001

For PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

Art Unit 3739 Examiner Roy Dean Gibson

OIPE JC48
MAY 1 0 2004
PATENT & TRADEMARK OFFICE

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows (check time period desired):

- ☐ One month (37 CFR 1.17(a)(1)) $____
- ☐ Two months (37 CFR 1.17(a)(2)) $____
- ☒ Three months (37 CFR 1.17(a)(3)) $ 950.00
- ☐ Four months (37 CFR 1.17(a)(4)) $____
- ☐ Five months (37 CFR 1.17(a)(5)) $____

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: $ 475.00.

☒ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to change fees in this application to a Deposit Account.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-0850.

I have enclosed a duplicate copy of this sheet.

I am the ☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).

☒ attorney or agent of record. Registration Number 34,235

☐ attorney or agent under 37 CFR 1.34(a). Registration number if acting under 37 CFR 1.34(a) ____.

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5/6/04
Date

Signature

(617) 345-6057
Telephone Number

David S. Resnick
Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of ____ forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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05/12/2004 RHERRANT 00000021 09853428
01 FC:2253 475.00 OP

OIPE JC48
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Attorney Docket No. 003252-052961 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: George Brainard
Serial No.: 09/853,428 Group: 3739
Filed: May 10, 2001 Examiner: Roy Dean Gibson
For: PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY

CERTIFICATE OF MAILING (37 C.F.R. SECTION 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the united States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

5/6/04
Date

Nicole M. Gignac
(type or print name of person mailing paper)

Nicole M. Gignac
Signature of person mailing paper

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CHANGE OF ATTORNEY'S ADDRESS IN APPLICATION

Please send all correspondence for this application as follows:

David S. Resnick
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110-2131

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Please direct telephone calls to:

(617) 345-1000

Please direct facsimiles to:

(617) 345-1300

Date: 5/6/04

Respectfully submitted,

David S. Resnick (Reg. No. 34,235)
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110
(617) 345-6057

BOS1376276.1

OIPE JC48
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PTO/SB/31 (08-03)
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NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Docket Number (Optional): 003252-052961

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450"
on 5/6/2004
Signature Nicole M. Gignac
Typed or printed name Nicole M. Gignac

In re Application of: George Brainard
Application Number: 09/853,428
Filed: 05/10/2001
For: PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY
Art Unit: 3739
Examiner: Roy Dean Gibson

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 1.17(b)) $ 330.00

[X] Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: $ 165.00

[X] A check in the amount of the fee is enclosed.

[ ] Payment by credit card. Form PTO-2038 is attached.

[ ] The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.

[X] The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-0850. I have enclosed a duplicate copy of this sheet.

[X] A petition for an extension of time under 37 CFR 1.36(a) (PTO/SB/22) is enclosed.

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I am the

[ ] applicant/inventor.

[ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

[X] attorney or agent of record. Registration number 34,235

[ ] attorney or agent acting under 37 CFR 1.34(a). Registration number if acting under 37 CFR 1.34(a).

Signature

David S. Resnick
Typed or printed name

(617) 345-6057
Telephone number

5/6/04
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

[ ] *Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.191. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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05/12/2004 RHEBRAHT 00000021 09853428
02 FC:2401 165.00 OP

OIPE JC48 MAY 1 0 2004 PATENT & TRADEMARK OFFICE

41 AF/3739

Attorney Docket No. 003252-052961 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	George Brainard		
Serial No.:	09/853,428	Group:	3739
Filed:	May 10, 2001	Examiner:	Roy Dean Gibson
For:	PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY		

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a) and 1.10)

I hereby certify that this correspondence:

1. Transmittal Form (1 pg.);
2. Notice of Appeal in Duplicate (2 pp.);
3. Petition for Extension of Time – 3 Months – in Duplicate (2 pp.):
4. Fee Transmittal (1 pg.);
5. Change of Attorney's Address in Application (1 pg.);
6. Check - $640.00;
7. Return Receipt Postcard;

is on the date shown below being:

MAILING	**FACSIMILE**
X deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450	transmitted by facsimile to the Patent and Trademark Office.

Nicole M. Gignac

Signature

Date: May 6, 2004

Nicole M. Gignac

(*type or print name of person certifying*)

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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/853,428
Filing Date	05/10/2001
First Named Inventor	George Brainard
Art Unit	3739
Examiner Name	Roy Dean Gibson
Attorney Docket Number	003252-052961

Total Number of Pages in This Submission

ENCLOSURES *(Check all that apply)*

- [X] Fee Transmittal Form
  - [X] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [X] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Response to Missing Parts/ Incomplete Application
  - [ ] Response to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [X] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
- [ ] After Allowance Communication to Group
- [ ] Appeal Communication to Board of Appeals and Interferences
- [X] Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
- [ ] Proprietary Information
- [ ] Status Letter
- [X] Other Enclosure(s) (please identify below): Certificate of Mailing; Return Receipt Postcard.

Remarks

The Commissioner is authorized to charge fee deficiencies or credit overpayments to the Nixon Peabody Deposit Account No. 50-0850.

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	David S. Resnick NIXON PEABODY LLP, 100 Summer Street, Boston, MA 02110
Signature	
Date	5/6/04

CERTIFICATE OF TRANSMISSION/MAILING

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Typed or printed name	Nicole M. Gignac		
Signature	Nicole M. Gignac	Date	5/6/2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

[X] Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 640.00

Complete if Known	
Application Number	09/853,428
Filing Date	05/10/2001
First Named Inventor	George Brainard
Examiner Name	Roy Dean Gibson
Art Unit	3739
Attorney Docket No.	003252-052961

METHOD OF PAYMENT *(check all that apply)*

[X] Check [ ] Credit card [ ] Money Order [ ] Other [ ] None

[X] Deposit Account:

Deposit Account Number: 50-0850

Deposit Account Name: NIXON PEABODY LLP

The Director is authorized to: *(check all that apply)*

[ ] Charge fee(s) indicated below [X] Credit any overpayments

[X] Charge any additional fee(s) or any underpayment of fee(s)

[ ] Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) ($)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims		Fee from below		Fee Paid
Total Claims		-20** =		X	=
Independent Claims		- 3** =		X	=
Multiple Dependent					=

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) ($)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for *ex parte* reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	475.00
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	165.00
1402	330	2402	165	Filing brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) ($) 640.00

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TECHNOLOGY CENTER R3700

SUBMITTED BY (Complete *(if applicable)*)

Name *(Print/Type)*	David S. Resnick	Registration No. *(Attorney/Agent)*	34,235	Telephone	(617) 345-6057
Signature				Date	5/6/04

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Bib Data Sheet

CONFIRMATION NO. 6772

SERIAL NUMBER	FILING OR 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
09/853,428	05/10/2001 RULE	607	3739	BRA01-NP002

APPLICANTS

George Brainard, Haddonfield, NJ;

**** CONTINUING DATA ****************************

This appln claims benefit of 60/203,308 05/10/2000
and claims benefit of 60/228,493 08/28/2000

**** FOREIGN APPLICATIONS **********************

IF REQUIRED, FOREIGN FILING LICENSE GRANTED
** 07/09/2001

		STATE OR COUNTRY	SHEETS DRAWING	TOTAL CLAIMS	INDEPENDENT CLAIMS
Foreign Priority claimed 35 USC 119 (a-d) conditions met Verified and Acknowledged	☐ yes ☐ no ☐ yes ☐ no ☐ Met after Allowance Examiner's Signature Initials	NJ	12	19	13

ADDRESS

540-4

DAVID S. RESNICK
NIXON PEABODY LLP
100 SUMMER STREET
BOSTON ,MA 02110-2131

TITLE

Photoreceptor system for melatonin regulation and phototherapy

FILING FEE RECEIVED		
755	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit

PATENT APPLICATION FEE DETERMINATION RECORD
Effective October 1, 2000

plication or Docket Number: 09/853 428

CLAIMS AS FILED - PART I

	(Column 1)	(Column 2)
TOTAL CLAIMS	19	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	19 minus 20=	* —
INDEPENDENT CLAIMS	13 minus 3 =	* 10
MULTIPLE DEPENDENT CLAIM PRESENT		☐

* If the difference in column 1 is less than zero, enter "0" in column 2

SMALL ENTITY TYPE ☐		OR	OTHER THAN SMALL ENTITY	
RATE	FEE		RATE	FEE
BASIC FEE	355.00	OR	BASIC FEE	710.00
X$ 9=		OR	X$18=	
X40=	400	OR	X80=	
+135=		OR	+270=	
TOTAL	755	OR	TOTAL	

CLAIMS AS AMENDED - PART II

AMENDMENT A

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
Total	* 11	Minus	** 20	= —
Independent	* 8	Minus	*** 13	= —
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM				☐

SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X$ 9=		OR	X$18=	
X40=		OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

BEST AVAILABLE COPY

AMENDMENT B

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
Total	*	Minus	**	=
Independent	*	Minus	***	=
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM				☐

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X$ 9=		OR	X$18=	
X40=		OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

AMENDMENT C

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
Total	*	Minus	**	=
Independent	*	Minus	***	=
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM				☐

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X$ 9=		OR	X$18=	
X40=		OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

* If the entry in column 1 is l ss than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."
***If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3."
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

50828 7590 03/15/2005

DAVID S. RESNICK
100 SUMMER STREET
NIXON PEABODY LLP
BOSTON, MA 02110-2131

EXAMINER
GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
3739	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment	Application No.	Applicant(s)	
	09/853,428	BRAINARD, GEORGE	
	Examiner	Art Unit	
	Roy D. Gibson	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
   (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
   (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
   (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
   (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
   (d) ☐ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
   (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
   (b) ☐ The submitted fee of $_____ is insufficient. A balance of $_____ is due.
   The issue fee required by 37 CFR 1.18 is $_____. The publication fee, if required by 37 CFR 1.18(d), is $_____.
   (c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
   (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
   (b) ☐ No corrected drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☒ The reason(s) below:

A telecon with the attorney of record, David Resnick, revealed the case was transferred to another law firm. However, since no correspondance from this new firm has been received, the case is now abandoned (more than 7 months since the Notice of Appeal filed on May 10, 2004).

Roy D. Gibson
Roy D. Gibson
Primary Examiner
Art Unit: 3739

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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APPLICATION NUMBER	PATENT NUMBER	GROUP ART UNIT	FILE WRAPPER LOCATION
09/853,428		3739	06B0

Change of Address/Power of Attorney

The following fields have been set to Customer Number 50828 on 03/07/2005

- Correspondence Address
- Power of Attorney
- Maintenance Fee Address

The address of record for Customer Number 50828 is:
DAVID S. RESNICK
100 SUMMER STREET
NIXON PEABODY LLP
BOSTON, MA 02110-2131

The Practitioners of record for Customer Number 50828 are:

PTO INSTRUCTIONS:

Please take the following action when the correspondence address has been changed to a customer number:
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2) Put a line through the old address on the File Jacket and enter the Customer Number as the new address.
3) File this Notice in the File Jacket.

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission: 12

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

ENCLOSURES *(Check all that apply)*

- [x] Fee Transmittal Form
  - [x] Fee Attached
- [x] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [x] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- [ ] Proprietary Information
- [ ] Status Letter
- [x] Other Enclosure(s) (please identify below):

credit card authorization; supplemental declaration; RCE

Remarks

This transmittal is being faxed to 571-273-8300. Please send a confirmatory fax to 877-369-2792. The reply is a request for reconsideration. All documents relate to application no. 09/853,428.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Wenger Law Offices		
Signature			
Printed name	Patricia A. Wenger		
Date	August 1, 2006	Reg. No.	42,218

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondance is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Signature			
Typed or printed name	Patricia A. Wenger	Date	August 1, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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PROCESSING FEE Under 37 CFR 1.17(i) TRANSMITTAL

(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

Enclosed is a paper filed under 37 CFR _____ that requires a processing fee (37 CFR 1.17(i)).
Payment of $ 130.00 is enclosed.

This form should be included with the above-mentioned paper and faxed or mailed to the Office using the appropriate Mail Stop, if applicable. *For transmittal of petition fees under 37 CFR 1.17(f), (g) or (h), see form PTO/SB/17p.*

Payment of Fees (small entity amounts are NOT available for the processing fees)

☐ The Commissioner is hereby authorized to charge the following fees to Deposit Account No._____:
☐ processing fee under 37 CFR 1.17(i) ☐ any deficiency of fees and credit of any overpayments
Enclose a duplicative copy of this form for fee processing.

☐ Check in the amount of $ 1.103(c) is enclosed.

☒ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Processing Fees under 37 CFR 1.17(i): Fee $130 Fee Code 1809 for all,
Except for § 1.221 papers (Fee Code 1803)

For papers filed under:
§ 1.28(c)(3) - for processing a non-itemized fee deficiency based on an error in small entity status.
§ 1.41 - for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.
§ 1.48 - for correcting inventorship, except in provisional applications.
§ 1.52(d) - for processing a nonprovisional application filed with a specification in a language other than English.
§ 1.53(b)(3) - to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).
§ 1.55 - for entry of late priority papers.
§ 1.71(g)(2) – to enter an amendment to the specification for purposes of 35 U.S.C. 103(c)(2) if not filed within the cited time periods
§ 1.99(a) - for processing a belated submission under § 1.99.
§ 1.103(b) - for requesting limited suspension of action, continued prosecution application (§ 1.53(d)).
§ 1.103(c) - for requesting limited suspension of action, request for continued examination (§ 1.114).
§ 1.103(d) - for requesting deferred examination of an application.
§ 1.217 - for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.
§ 1.221 - for requesting voluntary publication or republication of an application. **Fee Code 1803**
§ 1.291(c)(5) - for processing a second or subsequent protest by the same real party in interest.
§ 1.497(d) - for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.
§ 3.81 - for a patent to issue to assignee, assignment submitted after payment of the issue fee.

Signature — Date: 8/1/06

Patricia A. Wenger — Typed or printed name

42,218 — Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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08/01/2006 23:58 8773692792 PATRICIA WENGER PAGE 04
ID: RECEIVED JUL 27'06 9:00 No.001 P.03
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PTO/SB/64 (10-05)
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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor: Sraimed

Application No.: 09853,428 Art Unit: 3759

Filed: May 10, 2001 Examiner: Gibson, Roy Dean

Title: Photoreceptor System For Melatonin Regulation and Phototherapy

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1. Petition fee
- [x] Small entity-fee $ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- [ ] Other than small entity – fee $ _____ (37 CFR 1.17(m))

2. Reply and/or fee
A. The reply and/or fee to the above-noted Office action in the form of RCE (identify type of reply):
- [ ] has been filed previously on _____.
- [x] is enclosed herewith.

B. The issue fee and publication fee (if applicable) of $ _____.
- [ ] has been paid previously on _____.
- [ ] is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

08/03/2006 AWONDAF1 00000020 09853428
01 FC:2453 750.00 OP

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3. Terminal disclaimer with disclaimer fee

[✓] Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

[ ] A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

[signature]	Gena Glickman	7/27/06	7/28/06
Signature		Date	
GEORGE C. BRAINARD	Gena Glickman		
Typed or printed name		Registration Number, if applicable	
813 MT VERNON AVE	1631 State St., Apt. 4	215-955-7644	617-697-6917
Address		Telephone Number	
WAGONFIELD, NJ 08083	San Diego, CA 92101		
Address			

Enclosures: [✓] Fee Payment

[ ] Reply

[ ] Terminal Disclaimer Form

[ ] Additional sheets containing statements establishing unintentional delay

[✓] Other: RCE

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

[ ] Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

[X] Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

8/1/06
Date

[signature]
Signature

Patricia A. Wenger
Typed or printed name of person signing certificate

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Request for Continued Examination (RCE) Transmittal

Address to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

   a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

      i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

      ii. ☐ Other _____

   b. ☑ Enclosed

      i. ☑ Amendment/Reply

      ii. ☐ Affidavit(s)/ Declaration(s)

      iii. ☐ Information Disclosure Statement (IDS)

      iv. ☑ Other Request for reconsideration

2. **Miscellaneous**

   a. ☑ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of 3 months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

   b. ☑ Other Do not enter the 11/06/2003 Amendments/submission

3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

   a. ☐ The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to Deposit Account No. _____. I have enclosed a duplicate copy of this sheet.

      i. ☑ RCE fee required under 37 CFR 1.17(e)

      ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)

      iii. ☑ Other suspension fee (37 CFR 1.17(i)

   b. ☐ Check in the amount of $ _____ enclosed

   c. ☑ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Signature		Date	August 1, 2006
Name (Print/Type)	Patricia A. Wenger	Registration No.	42,218

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Signature			
Name (Print/Type)	Patricia A. Wenger	Date	August 1, 2006

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

---

Commissioner for Patents
Alexandria, VA 22313

REQUEST FOR RECONSIDERATION OF LETTER RESTARTING PERIOD OF RESPONSE MAILED ON NOVEMBER 7, 2003

1. On November 7, 2003, Examiner mailed a Letter Restarting Period of Response ("Restarting Letter").

2. The Restarting Letter states that only claims 1-3, 5, 6, 11-15, 17 were pending.

3. Applicants submit that the Restarting Letter was sent in error, because claims 1 - 19, as originally filed should have been pending.

4. On July 7, 2003, Applicant filed amendments, remarks and arguments in conjunction with a Petition to Revive an abandoned application.

5. On July 31, 2003, the Petition was dismissed.

6. On September 22, 2003, Applicant filed another Petition to Revive.

7. On September 30, 2003, the petition was granted, the notice of abandonment was withdrawn under 37 CFR 1.137a, and with the direction that the original office action be re-sent.

8. The July 7, 2003-filed amendments, remarks and arguments in conjunction with a Petition to Revive an abandoned application were not needed and should not have been entered on September 30, 2003.

9. On October 24, 2006, the original office action with the original 19 pending claims were re-sent.

10. On November 6, 2003 Applicant filed a miscellaneous letter noting that the July 7, 2003-filed amendments, remarks and arguments in conjunction with a Petition to Revive an abandoned application should have been entered on September 30, 2003. However,

APPLICATION NO.: 09/853,428

the July 7, 2003-filed amendments, remarks and arguments in conjunction with a Petition to Revive an abandoned application were not needed and should not have been entered on September 30, 2003.

11. Applicants request that the July 7, 2003-filed amendments, remarks and arguments in conjunction with a Petition to Revive an abandoned application not be entered; and alternatively, if they were entered, for them to be withdrawn.

12. Applicants note that the miscellaneous letter mailed on November 6, 2003 and the Restarting Letter crossed in the mail; however, restarting of the action did not occur.

13. Applicants request that the original office action with 19 pending claims to be re-sent.

14. If Examiner does not have the authority to correct the record as requested herein, that this be converted to a Petition to the Director under 37 CFR 1.181, 1.182 or 1.183, as appropriate, and that Applicants be given the opportunity to supplement this petition and provide the petition fee if required.

Respectfully submitted,

8/1/06

Patricia A. Wenger, Esquire
Registration No. 42,218; Customer Number 44321
Wenger Law Offices
201 North Jackson Street
Media, PA 19063
610-566-3040
pwenger@legalpatent.com

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

---

Commissioner for Patents
Alexandria, VA 22313

SUPPLEMENTAL AMENDMENT, PETITION AND FEE TO ADD TO ORIGINALLY ERRONEOUSLY NAMED INVENTORS IN DECLARATION (37 C.F.R. § 1.48(a))

1. On July 27, 2006, Applicants filed an amendment and petition is to correct the incorrect original naming of inventors as set forth in the declaration of May 10, 2001, pursuant to 37 C.F.R. § 1.48(a)(1).

2. A fee in the amount of $130.00 was paid with the Petition on July 27, 2006, and no fee for this Supplemental Petition is currently due.

3. A Declaration for Utility Patent Application executed by Gena Glickman on July 26, 2006 was attached to the Petition filed on July 27, 2006.

4. A Declaration for Utility Patent Application was executed by George Brainard and filed with the Application on May 10, 2001.

5. A Declaration for Utility Patent Application executed by both inventors, George Brainard and Gena Glickman, is filed herewith.

Respectfully submitted,

Patricia A. Wenger, Esquire
Registration No. 42,218; Customer Number 44321
Wenger Law Offices
201 North Jackson Street
Media, PA 19063
610-566-3040
pwenger@legalpatent.com

08/01/2006 23:58 8773692792 PATRICIA WENGER PAGE 10

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DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)

☐ Declaration Submitted With Initial Filing OR ☑ Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required)

Attorney Docket Number	
First Named Inventor	Brainard
COMPLETE IF KNOWN	
Application Number	09/853,428
Filing Date	May 10, 2001
Art Unit	3739
Examiner Name	Gibson Roy Dean

I hereby declare that:

Each inventor's residence, mailing address, and citizenship are as stated below next to their name.

I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Photoreceptor System for Melatonin Regulation and Phototherapy

(Title of the Invention)

the specification of which

☐ is attached hereto

OR

☑ was filed on (MM/DD/YYYY) 05/10/2001 as United States Application Number or PCT International Application Number 09/853,428 and was amended on (MM/DD/YYYY) _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached? YES	NO
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
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DECLARATION — Utility or Design Patent Application

Direct all correspondence to:	☑ The address associated with Customer Number:	44321	OR	☐ Correspondence address below

Name		
Address		
City	State	ZIP
Country	Telephone	Email

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

NAME OF SOLE OR FIRST INVENTOR:		☐ A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any]) George		Family Name or Surname Brainard	
Inventor's Signature			Date 8/1/06
Residence: City Haddonfield	State New Jersey	Country United States	Citizenship United States
Mailing Address 813 Mt. Vernon Avenue			
City Haddonfield	State New Jersey	Zip 08033	Country United States

☑ Additional inventors or a legal representative are being named on the 1 supplemental sheet(s) PTO/SB/02A or 02LR attached hereto.

PAGE 11/12 * RCVD AT 8/1/2006 11:56:58 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/5 * DNIS:2738300 * CSID:8773692792 * DURATION (mm-ss):07-50

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DECLARATION

ADDITIONAL INVENTOR(S)
Supplemental Sheet

Page 1 of 1

Name of Additional Joint Inventor, if any:		☐ A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Gena		Glickman	
Inventor's Signature Gena Glick			Date 7/31/2006
San Diego Residence: City	California State	United States Country	United States Citizenship
1631 State Street, Apt. 4 Mailing Address			
San Diego City	California State	92101 Zip	United States Country
Name of Additional Joint Inventor, if any:		☐ A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Inventor's Signature			Date
Residence: City	State	Country	Citizenship
Mailing Address			
City	State	Zip	Country
Name of Additional Joint Inventor, if any:		☐ A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Inventor's Signature			Date
Residence: City	State	Country	Citizenship
Mailing Address			
City	State	Zip	Country

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DAVID S. RESNICK
100 SUMMER STREET
NIXON PEABODY LLP
BOSTON, MA 02110-2131

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JAN 30 2007

OFFICE OF PETITIONS

In re Application of	:	
George Brainard	:	
Application No. 09/853428	:	LETTER
Filing or 371(c) Date: 05/10/2001	:	
Attorney Docket Number:	:	
BRA01-NP002	:	

This is a letter in response to the Petition to Revive an Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b), filed August 1, 2006; the "Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003", and "Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 C.F.R. § 1.48(a)". The delay in treating this petition is regretted.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed October 24, 2003, and re-mailed November 7, 2003. The Office action set a three (3) month period for reply.

Applicant filed an Amendment on November 10, 2003, and a Notice of Appeal on May 10, 2004; however, Applicant failed to file a brief in support of Appeal. Since no claims were allowed, the application became abandoned for failure to timely and properly reply to the non-final Office action mailed November 7, 2003, on February 8, 2004.

Applicant files the instant petition, Request for Continued Examination ("RCE"), a "Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003", and "Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 C.F.R. § 1.48(a)".

<u>The petition under 37 CFR 1.137(b)</u>

Applicant has filed a Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003. Because the application became abandoned for failure to timely and properly reply to the November 7, 2003 Office action, and because Applicant is requesting reconsideration of the Office action, a Decision on the petition to revive the application will be held in abeyance pending resolution of Applicant's Request for Reconsideration.

The Application is being referred to Technology Center Art Unit 3739 for consideration of the Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003.

The petition under 37 CFR 1.48(a)

Petitions to correct inventorship under 37 CFR 1.48 are also decided in the Technology Center. Applicant is advised that "Amendment of the inventorship requires:

(1) A request to correct the inventorship that sets forth the desired inventorship change;
(2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
(3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
(4) The processing fee set forth in § 1.17(i); and
(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).requesting reconsideration of the

37 CFR 1.48(a).

Finally, the application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

It is also noted that two addresses appear on the petition. Applicant is advised that this Office does not engage in dual correspondence. See, MPEP 402.10

The Application is being referred to Technology Center Art Unit 3739 for consideration of the Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

CC: Patricia Wenger, Esq.
Wenger Law Offices
201 North Jackson Street
Media, PA 19063

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TRANSMITTAL FORM

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Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	George Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Total Number of Pages in This Submission	2
Attorney Docket Number	

ENCLOSURES *(Check all that apply)*

- [ ] Fee Transmittal Form
  - [ ] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- [ ] Proprietary Information
- [ ] Status Letter
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Wenger Law Offices		
Signature			
Printed name	Patricia A. Wenger		
Date	February 7, 2007	Reg. No.	42,218

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Signature			
Typed or printed name	Patricia A. Wenger	Date	February 7, 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Application

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Commissioner for Patents
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Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	George Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

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I am the:

☐ Applicant/Inventor

☐ Assignee of record of the entire interest.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☑ Attorney or agent of record. Registration Number 42,218.

☐ Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number_____.

Signature

Typed or Printed Name Patricia A. Wenger

Date February 7, 2007 | Telephone 610-566-3040

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

50828 7590 04/20/2007
DAVID S. RESNICK
100 SUMMER STREET
NIXON PEABODY LLP
BOSTON, MA 02110-2131

EXAMINER
GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
3739	

MAIL DATE	DELIVERY MODE
04/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Re: ***REQUEST FOR RECONSIDERATION OF LETTER RESTARTING PERIOD OF RESPONSE MAILED ON NOVEMBER 7, 2003 from Applicant dated August 1, 2006.***

This letter is in response to the referral by the Office of Petitions to Art Unit 3739 for a decision regarding the Applicant's Request for Consideration as presented in a letter from the Office of Petitions to the Applicant mailed on January 30, 2007 (Reference paragraphs 5 and 6). After consideration by the Examiner and SPE, the request is dismissed because a response to the Office action of Nov. 7, 2003, was never received nor was an Appeal Brief received in a timely manner after the Notice of Appeal was filed on May 10, 2004. The original claims and all amendments to the claims (including those originally submitted Nov. 9, 2003 and then re-submitted Nov. 10, 2003) had been addressed by the examiner as of Nov. 7, 2003. In addition, the restarting of the action was made of record on Nov. 7, 2003.

The application is being referred back to the Office of Petitions for their consideration of the Petition to Revive an Unintentionally Abandoned Application Under C.F.R. § 1.137(b), filed August 1, 2006.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Roy D. Gibson

Roy D. Gibson
Primary Examiner
Art Unit 3739

April 18, 2007

07/27/2006 20:28 8773692792 PATRICIA WENGER PAGE 01

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission: 13

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

ENCLOSURES *(Check all that apply)*

- [x] Fee Transmittal Form
  - [x] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavit/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [x] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation
- [ ] Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- [ ] Proprietary Information
- [ ] Status Letter
- [x] Other Enclosure(s) (please identify below):

credit card auth; 2 power of attorney forms; declaration; 2 petition statements, declaration copy & power of attorney copy

Remarks

This transmittal is being faxed to: 571-273-8300. Please send a confirmatory fax to: 877-369-2792. All documents relate to application 09/853,428 (currently listed as abandoned). Please apply $130.00 to the Amendment and Petition to Add Inventor. An assignment is also being filed separately.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Wenger Law Offices		
Signature			
Printed name	Patricia A. Wenger		
Date	July 27, 2006	Reg. No.	42,216

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Patricia A. Wenger	Date	July 27, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PROCESSING FEE
Under 37 CFR 1.17(i)
TRANSMITTAL
(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

Enclosed is a paper filed under 37 CFR 1.48 **that requires a processing fee (37 CFR 1.17(i)).**
Payment of $ 130.00 **is enclosed.**
This form should be included with the above-mentioned paper and faxed or mailed to the Office using the appropriate Mail Stop, if applicable. *For transmittal of petition fees under 37 CFR 1.17(f), (g) or (h), see form PTO/SB/17p.*

Payment of Fees (small entity amounts are NOT available for the processing fees)

☐ The Commissioner is hereby authorized to charge the following fees to Deposit Account No._____:
☐ processing fee under 37 CFR 1.17(i) ☐ any deficiency of fees and credit of any overpayments
Enclose a duplicative copy of this form for fee processing.

☐ Check in the amount of $_____ is enclosed.

☒ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Processing Fees under 37 CFR 1.17(i): Fee $130 Fee Code 1808 for all,
Except for § 1.221 papers (Fee Code 1803)

For papers filed under:
§ 1.28(c)(3) - for processing a non-itemized fee deficiency based on an error in small entity status.
§ 1.41 - for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.
§ 1.48 - for correcting inventorship, except in provisional applications.
§ 1.52(d) - for processing a nonprovisional application filed with a specification in a language other than English.
§ 1.53(b)(3) - to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).
§ 1.55 - for entry of late priority papers.
§ 1.71(g)(2) – to enter an amendment to the specification for purposes of 35 U.S.C. 103(c)(2) if not filed within the cited time periods
§ 1.99(e) - for processing a belated submission under § 1.99.
§ 1.103(b) - for requesting limited suspension of action, continued prosecution application (§ 1.53(d)).
§ 1.103(c) - for requesting limited suspension of action, request for continued examination (§ 1.114).
§ 1.103(d) - for requesting deferred examination of an application.
§ 1.217 - for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.
§ 1.221 - for requesting voluntary publication or republication of an application. **Fee Code 1803**
§ 1.291(c)(5) - for processing a second or subsequent protest by the same real party in interest.
§ 1.497(d) - for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.
§ 3.81 - for a patent to issue to assignee, assignment submitted after payment of the issue fee.

Patricia A. Wenger
Signature

July 27, 2006
Date

Patricia A. Wenger
Typed or printed name

42,218
Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

07/28/2006 MBINAS 00000060 09853428
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ID: JUL 27'06 9:01 No.001 P.05

Application No. 091853,428

PTO/SB/81 (01-06)
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POWER OF ATTORNEY and CORRESPONDENCE ADDRESS INDICATION FORM

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Title	Photoreceptor System for Melatonin
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

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I hereby revoke all previous powers of attorney given in the above-identified application.

I hereby appoint:

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OR

☐ Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

Please recognize or change the correspondence address for the above-identified application to:

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☐ The address associated with Customer Number:

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☐ Firm or Individual Name					
Address					
City		State		Zip	
Country					
Telephone		Email			

I am the:

☑ Applicant/Inventor.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

SIGNATURE of Applicant or Assignee of Record

Signature	[signature]	Date	7/27/06
Name	George Brainard	Telephone	215-955-7649
Title and Company	Inventor		

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 2 forms are submitted.

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)

☐ Declaration Submitted With Initial Filing OR ☑ Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required)

Attorney Docket Number	
First Named Inventor	Brainard
COMPLETE IF KNOWN	
Application Number	09/853,428
Filing Date	May 10, 2001
Art Unit	3739
Examiner Name	Gibson, Roy Dean

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I hereby declare that:

Each inventor's residence, mailing address, and citizenship are as stated below next to their name.

I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Photoreceptor System for Melatonin Regulation and Phototherapy

(Title of the Invention)

the specification of which

☐ is attached hereto

OR

☑ was filed on (MM/DD/YYYY) 05/10/2001 as United States Application Number or PCT International Application Number 09/853,428 and was amended on (MM/DD/YYYY) _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached? YES	NO
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
If you need assistance completing the form, call 1-800-PTO-9199 and select option 2.

Application No. 09/853,428

PTO/SB/01 (10-05)
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DECLARATION — Utility or Design Patent Application

Direct all correspondence to: ☑ The address associated with Customer Number: 44321 OR ☐ Correspondence address below

Name

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Address

City	State	ZIP

Country	Telephone	Email

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

NAME OF SOLE OR FIRST INVENTOR: ☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])	Family Name or Surname
Gena	Glickman

Inventor's Signature	Date
Gena Glickman	7/26/2006

Residence: City	State	Country	Citizenship
San Diego	CA	U.S.A.	U.S.A.

Mailing Address
1631 State Street, Apt. 4

City	State	Zip	Country
San Diego	CA	92101	U.S.A.

☐ Additional inventors or a legal representative are being named on the _____ supplemental sheet(s) PTO/SB/02A or 02LR attached hereto.

PAGE 6/13 * RCVD AT 7/27/2006 8:27:43 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/22 * DNIS:2738300 * CSID:8773692792 * DURATION (mm-ss):08-10

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Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Title	Photoreceptor System for Melatonin
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

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I hereby revoke all previous powers of attorney given in the above-identified application.

I hereby appoint:

☑ Practitioners associated with the Customer Number: 44321

OR

☐ Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

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☐ The address associated with Customer Number:

OR

☐ Firm or Individual Name					
Address					
City		State		Zip	
Country					
Telephone		Email			

I am the:

☑ Applicant/inventor.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

SIGNATURE of Applicant or Assignee of Record

Signature	Gena Glickman	Date	7/26/2006
Name	Gena Glickman	Telephone	617-697-6917
Title and Company	Inventor		

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 2 forms are submitted.

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

---

Commissioner for Patents
Alexandria, VA 22313

AMENDMENT, PETITION AND FEE TO ADD TO ORIGINALLY ERRONEOUSLY NAMED INVENTORS IN DECLARATION (37 C.F.R. § 1.48(a))

1. This amendment and petition is to correct the incorrect original naming of inventors as set forth in the declaration of May 10, 2001, pursuant to 37 C.F.R. § 1.48(a)(1).

2. Add the previously unnamed person, Gena Glickman, as inventor of this application.

3. A statement from Gena Glickman is attached stating that the error in inventorship occurred without deceptive intent on her part 37 C.F.R. § 1.48(a)(2).

4. A declaration from the other inventor, George Brainard, is attached stating that the error in inventorship occurred without deceptive intent on his part 37 C.F.R. § 1.48(a)(3).

5. A copy of a Declaration for Utility Patent Application executed by Gena Glickman is attached.

6. A copy of a Power of Attorney and Correspondence Address Indication Form executed by Gena Glickman is attached.

5. A fee in the amount of $130.00 is paid herewith.

Respectfully submitted,

Patricia A. Wenger, Esquire
Registration No. 42,218; Customer Number 44321
Wenger Law Offices
201 North Jackson Street
Media, PA 19063
610-566-3040
pwenger@legalpatent.com

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APPLICATION NO.:	09/853,428
FILING DATE:	May 10, 2001
FIRST NAMED INVENTOR:	Brainard
ART UNIT:	3739
EXAMINER:	Gibson, Roy Dean
TITLE:	Photoreceptor System for Melatonin Regulation and Phototherapy

---

Commissioner for Patents
Alexandria, VA 22313

Sir:

STATEMENT FROM GENA GLICKMAN

I, Gena Glickman, hereby declare as follows:

1. I am an inventor for the above-identified patent application.

2. I reside at 1631 State Street, Apt. 4, San Diego, CA 92101.

3. The error in inventorship occurred without deceptive intent on my part.

4. I hereby further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 7/26/2006

Gena Glickman
Gena Glickman

PTO/SB/81 (01-06)
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POWER OF ATTORNEY and CORRESPONDENCE ADDRESS INDICATION FORM

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Title	Photoreceptor System for Melatonin
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

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I hereby revoke all previous powers of attorney given in the above-identified application.

I hereby appoint:

☑ Practitioners associated with the Customer Number: 44321

OR

☐ Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

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OR

☐ The address associated with Customer Number:

OR

☐ Firm or Individual Name					
Address					
City		State		Zip	
Country					
Telephone		Email			

I am the:

☑ Applicant/Inventor.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

SIGNATURE of Applicant or Assignee of Record

Signature	Gena Glickman	Date	7/26/2006
Name	Gena Glickman	Telephone	617-697-6917
Title and Company	Inventor		

NOTE: Signature of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.:	09/853,428
FILING DATE:	May 10, 2001
FIRST NAMED INVENTOR:	Brainard
ART UNIT:	3739
EXAMINER:	Gibson, Roy Dean
TITLE:	Photoreceptor System for Melatonin Regulation and Phototherapy

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Commissioner for Patents
Alexandria, VA 22313

Sir:

STATEMENT FROM GEORGE BRAINARD

I, George Brainard, hereby declare as follows:

1. I am an inventor for the above-identified patent application.

2. I reside at 813 Mt. Vernon Avenue, Haddonfield, NJ 08033.

3. The error in inventorship occurred without deceptive intent on my part.

4. I hereby further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 7/27/06

George Brainard

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DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)

☐ Declaration Submitted With Initial Filing OR ☑ Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required)

Attorney Docket Number	
First Named Inventor	Brainard
COMPLETE IF KNOWN	
Application Number	09/853,428
Filing Date	May 10, 2001
Art Unit	3739
Examiner Name	Gibson, Roy Dean

I hereby declare that:

Each inventor's residence, mailing address, and citizenship are as stated below next to their name.

I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Photoreceptor System for Melatonin Regulation and Phototherapy

(Title of the invention)

the specification of which

☐ is attached hereto

OR

☑ was filed on (MM/DD/YYYY) 05/10/2001 as United States Application Number or PCT International Application Number 09/853,428 and was amended on (MM/DD/YYYY) _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached? YES	NO
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
If you need assistance completing the form, call 1-800-PTO-9199 and select option 2.

07/27/2006 20:28 8773692792 PATRICIA WENGER RECEIVED CENTRAL FAX CENTER PAGE 12

Application No. 09/853,428

JUL 27 2006

PTO/SB/01 (10-03)
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DECLARATION — Utility or Design Patent Application

Direct all correspondence to: ☑ The address associated with Customer Number: 44321 OR ☐ Correspondence address below

Name

Address

City	State	ZIP

Country	Telephone	Email

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

NAME OF SOLE OR FIRST INVENTOR: ☐ A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])	Family Name or Surname
Gena	Glickman

Inventor's Signature	Date
Gena Glickman	7/26/2006

Residence: City	State	Country	Citizenship
San Diego	CA	U.S.A.	U.S.A.

Mailing Address
1631 State Street, Apt. 4

City	State	Zip	Country
San Diego	CA	92101	U.S.A.

☐ Additional inventors or a legal representative are being named on the _____ supplemental sheet(s) PTO/SB/02A or 02B attached hereto.

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/853,428	05/10/2001	George Brainard	BRA01-NP002

CONFIRMATION NO. 6772

OC000000023538353

50828
DAVID S. RESNICK
100 SUMMER STREET
NIXON PEABODY LLP
BOSTON, MA 02110-2131

Date Mailed: 04/25/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/27/2006.

- The Power of Attorney to you in this application has been revoked by the applicant. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

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09/853,428	05/10/2001	George Brainard	BRA01-NP002

CONFIRMATION NO. 6772

OC000000023538430

44321
PATRICIA A. WENGER
201 NORTH JACKSON STREET
MEDIA, PA 19063

Date Mailed: 04/25/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

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This is in response to the Power of Attorney filed 07/27/2006.

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BOSTON, MA 02110-2131

Date Mailed: 04/25/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

44321 7590 05/07/2007
PATRICIA A. WENGER
201 NORTH JACKSON STREET
MEDIA, PA 19063

EXAMINER
GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
3739	

MAIL DATE	DELIVERY MODE
05/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Re: ***REQUEST FOR RECONSIDERATION OF LETTER RESTARTING PERIOD OF RESPONSE MAILED ON NOVEMBER 7, 2003 from Applicant dated August 1, 2006.***

This letter is in response to the referral by the Office of Petitions to Art Unit 3739 for a decision regarding the Applicant's Request for Consideration as presented in a letter from the Office of Petitions to the Applicant mailed on January 30, 2007 (Reference paragraphs 5 and 6). After consideration by the Examiner and SPE, the request is dismissed because a response to the Office action of Nov. 7, 2003, was never received nor was an Appeal Brief received in a timely manner after the Notice of Appeal was filed on May 10, 2004. The original claims and all amendments to the claims (including those originally submitted July 9, 2003 and then re-submitted Nov. 10, 2003) had been addressed by the examiner as of Nov. 7, 2003. In addition, the restarting of the action was made of record on Nov. 7, 2003.

The application is being referred back to the Office of Petitions for their consideration of the Petition to Revive an Unintentionally Abandoned Application Under C.F.R. § 1.137(b), filed August 1, 2006.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Roy D. Gibson

Roy D. Gibson
Primary Examiner
Art Unit 3739

April 18, 2007

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

44321 7590 05/07/2007
PATRICIA A. WENGER
201 NORTH JACKSON STREET
MEDIA, PA 19063

EXAMINER
GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
3739	

MAIL DATE	DELIVERY MODE
~~05/07/2007~~ 5/10/07	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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PATRICIA A. WENGER
201 NORTH JACKSON STREET
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In re Application of: BRAINARD, GEORGE Serial No.: 09/853,428 Filed: May 10, 2001 Docket: BRA01-NP002 Title: PHOTORECEPTOR SYSTEM FOR MELATONIN REGULATION AND PHOTOTHERAPY	DECISION ON RECONSIDERATION of LETTER RESTARTING PERIOD of RESPONSE Mailed Nov. 7, 2003

This is a decision in response to the decision rendered by the Office of Petitions on Jan. 30, 2007 to answer the Request for Reconsideration of Letter Restarting Period of Response mailed Nov. 7, 2003. The Request is currently considered pursuant to 37 CFR 1.181, and no fee is required.

The Request for Reconsideration is **DISMISSED**.

On Aug. 1, 2006, petitioner filed the Reconsideration of Letter Restarting Period of Response mailed Nov. 7, 2003. In the Reconsideration, petitioner requests the Office to withdraw the entry of the amendment filed earlier on Jul. 7, 2003. Petitioner believes that such amendment filed on Jul. 9, 2003 was not needed and further requests the examiner to re-send the original Office action based on the originally filed claims 1-19.

The record shows that:

1) On Jun. 6, 2002, the examiner issued a non-final Office action.
2) On Dec. 10, 2002, a Notice of Abandonment was mailed for failure to respond to the Jun. 6, 2002 Office action.
3) On Jan. 21, 2003, petitioner filed a petition to revive based on non-receipt of the Office action mailed Jun. 6, 2002
4) On Feb. 4, 2003, a decision to dismiss the petition filed on Jan. 21, 2003 was mailed because there was insufficient showing of non-receipt of the non-final Office action mailed Jun. 6, 2002.
5) On Jul. 9, 2003, petitioner filed a Further Petition accompanying with evidence of non-receipt of Office action of Jun. 6, 2002. A fully responsive amendment to the Office action of Jun. 2, 2002 was also filed on Jul. 9, 2003. In order to do so,

presumably the applicant obtained a copy of the missing Office action of Jun. 2, 2002.

6) On Jul 31, 2003, the Office of Petitions dismissed the petition again for failure to satisfy the requirements of 37 CFR 1.137(a).
7) Petitioner filed a renewed petition on Sep. 24, 2003 and supplied the missing documents as required in the decision of Jul. 31, 2003.
8) Sep. 30, 2003, Office of Petitions granted the Further Petition filed on Jul. 9, 2003. The application was revived.
9) On Oct. 24, 2003, the examiner re-mailed the non-final Office action of Jun. 2, 2002 without treating the amendment filed on Jul. 9, 2003.
10) A few days later, on Nov. 7, 2003, the examiner realized that an amendment filed on Jul. 9, 2003 was overlooked and issued a supplemental non-final Office action.
11) On Nov. 10, 2003, the applicant mailed a Letter to Examiner and requested the examiner to treat the amendment filed Jul. 9, 2003 with a certificate of mailing date of Nov. 6, 2003.
12) In response to the examiner non-final Office action of Nov. 7, 2003, the applicant on May 10, 2004, filed a Notice of Appeal with three months extension of time.
13) On Jul. 22, 2004, the application became abandoned for failure to file appeal brief.
14) On Aug. 1, 2006, Petitioner filed Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 CFR 1.48(a); Request for Continued Examination; Petition to revive under 37 CFR 1.137(b); and Request for Reconsideration of Letter Restarting Period of Response mailed Nov. 7, 2003.
15) On Jan. 30, 2007, the Office of Petitions rendered a decision to defer the ruling on the petition to revive and request the TC 3700 to answer the Reconsideration of Letter Restarting Period of Response mailed Nov. 7, 2003 filed on Aug. 1, 2006.

Discussion and Analysis

In the Request for Reconsideration of Letter Restarting Period of Response mailed Nov. 7, 2003 filed on Aug. 1, 2006, petitioner alleges and requests that a. the July 7, 2003-filed amendments, remarks and arguments in conjunction with a Petition to Revive an abandoned application were not needed and should not have been entered on September 30, 2003; b. On Nov. 10, 2003 (mailed on Nov. 6, 2003) Applicant filed a Letter to Examiner noting that the Jul. 9, 2003 amendments (mailed by applicant on July 7, 2003), remarks and arguments in conjunction with a Petition to Revive an abandoned application should have been entered on September 30, 2003. However, the July 7, 2003-filed amendments, remarks and arguments in conjunction with a Petition to Revive an abandoned application were not needed and should not have been entered on September 30, 2003; c. Applicants request that the Jul. 9, 2003 amendments (mailed by applicant on July 7, 2003), remarks and arguments in conjunction with a Petition to Revive an abandoned application not be entered; and alternatively, if they were entered, for them to be withdrawn. Petitioner also alleges that the miscellaneous letter of Nov. 10, 2003 (mailed by the applicant on Nov. 6, 2003) and the supplemental non-final Office action were crossed in the

mail. Therefore, it is alleged that the restarting of the action did not occur. Now, petitioner requests that the original office action with 19 pending claims to be re-sent.

Petitioner's request of resending the original Office action with 19 pending claims cannot be granted because the original Office action with 19 claims pending was in fact re-mailed on Oct. 24, 2003 pursuant to the decision rendered by the Office of Petitions on Sep. 30, 2003. Due to the examiner's inadvertence of failure to treat the amendment filed on Jul. 9, 2003, the examiner issued a supplemental complete non-final Office action on Nov. 7, 2003. This action clearly re-started a new period to response. Petitioner now requests that the entry of the amendment filed on Jul. 9, 2003 be removed because the amendment was not needed and should not have been entered. Petitioner did not specify why the amendment was not needed and did not provide any reasons as to why the amendment filed on Jul. 9, 2003 should not have been entered. Petitioner mentions that the miscellaneous letter of Nov. 10, 2003 (mailed by the applicant on Nov. 6, 2003) and the supplemental non-final Office action of Nov. 7, 2003 were crossed in the mail. That the letters crossed in the mail is not probative. Further, petitioner does not explain why her specific request for entry and treatment of this amendment in her Nov.10, 2003 letter is now deemed to have been in error. The Jul. 9, 2003 amendment was already in the file and entered after it was filed. On page one of the Jul. 9, 2003 amendment, the applicant clearly stated that the amendment is " In response to the Office Action of June 6, 2002, please amend the above-identified application as follows". Therefore, the amendment was properly entered at the applicant's request. The request to remove the entry the amendment filed on Jul. 9, 2003 cannot be granted.

It is also noted that in the Request for Reconsideration of Letter Restarting Period of Response mailed Nov. 7, 2003 filed on Aug. 1, 2006, petitioner did not mention that in response to the non-final Office action mailed on Nov. 7, 2003, a notice of appeal was filed on May 10, 2004. This is a clear indication that the applicant intended to further purse the twice rejected claims 1-3, 5, 6, 11-15 and 17 through appeal process pursuant to 35 USC 134 and M.P.E.P. 1204. Therefore, the notice of appeal is deemed to be a proper response to the non-final Office action mailed on Nov. 7, 2003. Moreover, on Aug. 1, 2006, petitioner filed the current petition to revive the application based on unintentional abandonment under 37 CFR 1.137(b) with a Request for Continued Examination (RCE). The filing of RCE is deemed proper under 37 CFR 1.114 because the application is under appeal.

Finally, Review of the record shows that the Request for Reconsideration of Letter Restarting Period of Response mailed Nov. 7, 2003 was filed on Aug. 1, 2006 which is almost 33 months after the mailing date of the supplemental non-final Office action mailed on Nov. 7, 2003. Pursuant to 37 CFR 1.181(f), the petition is not timely filed since the petition was not filed within two months of the action complained of. As the petition was not timely filed, the relief requested will not be granted. Petitioner is entitled to request reconsideration of this decision provided that the request for reconsideration is filed within two months of the date of this decision.

Conclusion

For the foregoing reasons, the relief requested by petitioner will not be granted. The file is being forwarded to the office of Petitions for consideration of a decision on petition to Revive an Unintentional Abandoned Application Under 37 C.F.R. 1.137(b).

PETITION DISMISSED

Frederick R. Schmidt, Director
Technology Center 3700

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PATRICIA A. WENGER
201 NORTH JACKSON STREET
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MAY 16 2007

OFFICE OF PETITIONS

In re Application of	:	
George Brainard	:	
Application No. 09/853428	:	DECISION ON PETITION
Filing or 371(c) Date: 05/10/2001	:	
Attorney Docket Number:	:	
BRA01-NP002	:	

This is a Decision in response to the Petition to Revive an Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b), filed August 1, 2006; the "Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003", and "Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 C.F.R. § 1.48(a)". The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request for Reconsideration of Petition under [insert the applicable code section]". This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed October 24, 2003, and re-mailed November 7, 2003. The Office action set a three (3) month period for reply.

Applicant filed an Amendment on November 10, 2003, and a Notice of Appeal on May 10, 2004; however, Applicant failed to file a brief in support of Appeal. Since no claims were allowed, the application became abandoned for failure to timely and properly reply to the non-final Office action mailed November 7, 2003, on February 8, 2004.

Applicant files the instant petition, Request for Continued Examination ("RCE"), a "Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003", and "Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 C.F.R. § 1.48(a)".

Applicant's request for reconsideration of the Office action

A review of Office records revealed that Applicant filed a Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003. Because the application became abandoned for failure to timely and properly reply to the November 7, 2003 Office action, and because Applicant requested reconsideration of the Office action, a Decision on the petition to revive the application was held in abeyance pending resolution of Applicant's Request for Reconsideration. The Application was referred to Technology Center Art Unit 3739 for consideration of the Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003.

Applicant's Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 C.F.R. § 1.48(a)

In response to Applicant's Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 C.F.R. § 1.48(a), Applicant was advised as to the requirements for a grantable petition to correct inventorship under 37 CFR 1.48.

Decision on Applicant's request for reconsideration of the Office action

In a decision mailed May 10, 2007, this Office dismissed Applicant's request for reconsideration of the Office action.

The petition under 37 CFR 1.137(b)

A grantable petition pursuant to this paragraph must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination ("RCE") in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

As to item (1), Applicant filed a RCE and a "Request for Reconsideration of Letter Restarting Period of Response Mailed on November 7, 2003[1]". However, an applicant cannot request continued examination of an application until after prosecution in the application is closed. See 37 CFR 1.114(a). Prosecution in an application is closed if the application is under appeal, or the last Office action is a final action (37 CFR 1.113), a notice of allowance (37 CFR 1.311), or an action that otherwise closes prosecution in the application (e.g., an Office action under Ex parte Quayle, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935)).

In this instance, the application became abandoned for failure to timely and properly reply to the non-final Office action, re-mailed November 7, 2003. As such, prosecution of the application is not closed, and the RCE is not a proper reply to the Office action.

The MPEP further provides that "[i]f prosecution in the application is not closed, applicant will be notified of the improper RCE and any amendment/reply will be entered." However, in this instance, Applicant did not file an Amendment responsive to the Office action with the RCE. As such, Applicant has failed to file a reply to the Office action.

In view of the above, the petition is dismissed. Applicant should file a request for reconsideration of petition and include the required reply.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

[1] Applicant also filed a "Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 C.F.R. § 1.48(a)", however, the Supplemental Amendment was to add inventor(s) and was not responsive to the office action.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

---

Honorable Commissioner for Patents

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CFR §1.137(b)

Attached, please find amendments in reply to the outstanding Office Action of November 7, 2003. The petition fee as set forth in §1.17(m) was submitted on August 1, 2006.

Inventors make the following statement:

> The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to paragraph 37 CFR §1.137(b) was unintentional.

George C. Brainard — Date: 7/16/07

Address: 813 Mt. Vernon Ave., Haddonfield, NJ 08033 — Telephone Number: 856-354-0499

Gena Glickman — Date: 7/12/07

Address: 1551 State Street, Apt. 4, San Diego, CA 92101 — Telephone Number: 617-697-6917

Respectfully submitted,

7/16/07

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07/16/2007 23:19 8773692792 PATRICIA WENGER PAGE 04

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JUL 1 6 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: George Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

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Honorable Commissioner for Patents
Alexandria, VA 22313-1450

AMENDMENTS AND REMARKS/ARGUMENTS

I. AMENDMENTS

Amend the claims as follows:

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Claim 1. (previously presented) A method of treating or preventing a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system emits a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 435 - 488 nm.

Claim 2. (original) The method of Claim 1, wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claim 3. (previously presented) A method of minimizing circadian and neuroendocrine stimulation or disruption in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system excludes emission of a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 435 - 488 nm.

Claim 4. (canceled)

Claim 5. (previously presented) A light system, comprising at least one light source, said light source emitting a balance of wavelengths to stimulate a mammalian circadian, photoneural, or neuroendocrine system, said balance of wavelengths having a peak sensitivity ranging from 435 - 488 nm.

Claim 6. (previously presented) A light system, comprising at least one light source, said light source excluding emission of a balance of wavelengths to stimulate a mammalian circadian, photoneural, or neuroendocrine system, said balance of wavelengths having a peak sensitivity ranging from 435 - 488.

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Claim 7. (canceled)

Claim 8. (canceled)

Claim 9. (canceled)

Claim 10. (canceled)

Claim 11. (previously presented) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one transparent material component, said light source emitting light through said transparent material component, said transparent material component comprising at least one light filtering component, said light filtering component specifically transmitting a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 435 - 488 nm.

Claim 12. (original) The method of Claim 11, wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claim 13. (previously presented) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one translucent material component, said light source emitting light through said translucent material component, said translucent material component comprising at least one light filtering component, said light filtering component specifically transmitting a balance of wavelengths to stimulate a

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circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 435 - 488 nm.

Claim 14. (original) The method of Claim 13, wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claim 15. (original) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one transparent material component, said light source emitting light through said transparent matenal component, said transparent material component comprising at least one light filtering component, said light filtering component specifically blocking a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425 - 505 nm.

Claim 16. (canceled)

Claim 17. (previously presented) A method of minimizing circadian and neuroendocrine stimulation or disruption in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one translucent material component, said light source emitting light through said translucent material component, said translucent material component comprising at least one light filtering component, said light filtering component specifically blocking a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal,

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said balance of wavelengths having a peak sensitivity ranging from 425 - 505 nm.

Claim 18. (canceled)

Claim 19. (canceled)

Claim 20. (new) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system excludes emission of a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425 - 505 nm, and wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claim 21. (new) A transparent composition, comprising at least one light filtering component, said light filtering component specifically transmitting a balance of wavelengths for stimulating a mammalian circadian, photoneural, or neuroendocrine system, said balance of wavelengths having a peak transmittance ranging from 425 - 505 nm.

Claim 22. (new) A translucent composition, comprising at least one light filtering component, said light filtering component specifically transmitting a balance of wavelengths for stimulating a mammalian circadian, photoneural, or neuroendocrine

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system, said balance of wavelengths having a peak transmittance ranging from 425 - 505 nm.

Claim 23. (new) A transparent composition, comprising at least one light filtering component, said light filtering component specifically blocking a balance of wavelengths for stimulating a mammalian circadian, photoneural, or neuroendocrine system, said balance of wavelengths having a peak sensitivity ranging from 425 - 505 nm.

Claim 24. (new) A translucent composition, comprising at least one light filtering component, said light filtering component specifically blocking a balance of wavelengths for stimulating a mammalian circadian, photoneural, or neuroendocrine system, said balance of wavelengths having a peak sensitivity ranging from 425 - 505 nm.

Claim 25. (new) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one transparent material component, said light source emitting light through said transparent material component, said transparent material component comprising at least one light filtering component, said light filtering component specifically blocking a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425 - 505 nm, wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

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Claim 26. (new) A method of treating a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system comprises at least one light source and at least one translucent material component, said light source emitting light through said translucent material component, said translucent material component comprising at least one light filtering component, said light filtering component specifically blocking a balance of wavelengths to stimulate a circadian, photoneural, or neuroendocrine system of said mammal, said balance of wavelengths having a peak sensitivity ranging from 425 - 5055 nm, wherein said light responsive disorder is at least one of the group of seasonal affective disorder (SAD), a sleep disorder, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claim 27. (new) A light meter system for quantifying light which stimulates a mammalian circadian, , photoneural, or neuroendocrine system under normal conditions or which provides light therapy, said light meter system comprising at least one light metering device configured to match wavelength sensitivity of mammalian photoreceptors for circadian and neuroendocrine regulation, said wavelength having a peak sensitivity ranging from 425 - 505 nm.

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II. REMARKS/ARGUMENTS

REQUEST FOR RECONSIDERATION

Applicants submit these Amendments and Request for Reconsideration of the office action filed on November 7, 2003 (hereinafter referred to as "Amendments and Office Action Request") along with a Request for Reconsideration of Petition under 37 CFR § 1.137(b) (hereinafter referred to as "Petition Request"). Consistent with Applicants' telephone interview with Examiner Gibson on May 18, 2007 (hereinafter referred to as "May 18, 2007 Interview", a summary of which is attached hereto and labeled "Attachment B") Applicants are filing along with the herein Amendments and Office Action Request a copy of Applicants' telephone interview summary with Examiner Gibson on April 25, 2007 (hereinafter referred to as "April 25, 2007 Interview", which is attached hereto and labeled "Attachment A".)

During the April 25, 2007 Interview, it was the understanding of Applicants that Applicants and the Examiner had an understanding of the status of the application that differs from the "Decision on Reconsideration of Letter Restarting Period of Response Mailed Nov. 7, 2003" (hereinafter referred to as "Reconsideration Decision".) Pursuant to the April 25, 2007 Interview, Applicants understood that Applicants and Examiner analyzed the November 7, 2003 Office Action as an improper "replacement" of the October 24, 2003 Office action; whereas the Reconsideration Decision analyzed the November 7, 2003 Office Action as a "supplemental non-final Office action" of the October 24, 2003 Office Action.

In Applicant's Amendments filed on November 6, 2003 (and according to the Reconsideration Decision also filed on July 9, 2003) in response to a non-final office

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action, Applicant amended claims 4, 7 - 10, 16, and 18 - 19 by canceling them "to further define the present invention and expedite prosecution." In the current response, which is also in response to a non-final office action, Applicants rescind the previously made statement that the cancellation of claims 4, 7 - 10, 16, and 18 - 19 further defines the present invention and expedites prosecution; and as a result, Applicants herein amend the claims for reasons not related to patentability to reassert claims 4, 7 - 10, 16, and 18 - 19 in new claims, respectively numbered 20 - 27, all written as independent claims that do not narrow the literal scope of any claim element.

While the Reconsideration Decision states that "presumably the applicant obtained a copy of the missing Office action of June 2, 2002", and while the Reconsideration Decision terms the November 7, 2003 Office Action as a "supplemental non-final Office action" of the October 24, 2003 Office Action, the November 7, 2003 Office Action states that it is a "replacement" of the October 24, 2003 Office Action. However, in an attempt to move prosecution forward in an expedited manner and based on a firm prosecution record, Applicants and Examiner agreed to proceed as set forth in the May 18, 2007 Interview. Accordingly, Applicants submit the amended claims as follows: the previously canceled claims 4, 7 - 10, 16, and 18 - 19 are resubmitted as new claims 20 - 27, all written as independent claims, and claims 1 - 3, 5, 6, 11 - 15 and 17 are resubmitted as amended in Applicant's filing of November 6, 2003. Following the herein filing of Applicants' Amendments and Office Action Request, it is the understanding of Applicants that Examiner will issue a non-final office action that at least in part will be comprised of a reissue of (1) the relevant portions of the Office Action of October 24, 2003 for original claims 4, 7 - 10, 16, and 18 - 19, which Applicants have resubmitted as

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new independent claims 20 - 27, and (2) the Office Action of November 7, 2003 for claims 1 - 3, 5, 6, 11 - 15 and 17, as amended in Applicant's filing of November 6, 2003. Thereafter, the Applicants may move the application forward by having an interview with the Examiner on the substantive issues relating to the pending claims.

Date: 7/16/07

Respectfully Submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: George Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

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Honorable Commissioner for Patents
Alexandria, VA 22313-1450

INTERVIEW SUMMARY

Dear Sir:

On April 25, 2007, Applicants' counsel, Patricia A. Wenger, had a telephone interview with Examiner Roy Dean Gibson. Applicants' counsel noted she had read Mr. Gibson's Miscellaneous Action dated April 20, 2007 entitled: "REQUEST FOR RECONSIDERATION OF LETTER RESTARTING PERIOD OF RESPONSE MAILED ON NOVEMBER 7, 2003 from Applicant dated August 1, 2006," in which the Examiner dismissed the Request for Reconsideration. Applicants' counsel indicated to Mr. Gibson the following: 1) in the September 30, 2003 notice granting the petition to revive and withdrawing the notice of abandonment, the Petitions Attorney required the Technology Center to re-mail the original office action and to restart the time period for response; 2) on October 24, 2003, the Examiner re-sent the original office action that addressed the originally filed 19 claims; and 3) the Examiner sent an Office Action on

ATTACHMENT A

November 7, 2003 that *replaced* the Office Action of October 24, 2003 and that addressed 11 claims.

Applicants' Attorney suggested that the November 7, 2003 Office Action was sent in error.

Date: 7/16/07

Respectfully Submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

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FIRST NAMED INVENTOR: George Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

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Honorable Commissioner for Patents
Alexandria, VA 22313-1450

INTERVIEW SUMMARY

Dear Sir:

On May 18, 2007, Applicants' counsel, Patricia A. Wenger, had a telephone interview with Examiner Roy Dean Gibson. Applicants' counsel suggested the following procedure, following the previous interview of April 25, 2007 with Mr. Gibson and receipt of Mr. Schmidt's and Mr. Wood's petition decisions, to which Mr. Gibson agreed:

1. Applicants will file a request for reconsideration of Mr. Wood's Petition Decision;
2. Along with the request for reconsideration, Applicants will file a request for reconsideration to the office action filed on November 7, 2003 that consists of 1) a statement indicating that the Applicants and Examiner misunderstood the status of the application in relation to Mr. Schmidt's Decision; and 2) amended claims that will include the previously canceled claims 4, 7 - 10, 16, and 18 - 19, resubmitted as new claims 20 - 27, and claims 1 - 3, 5, 6, 11 - 15 and 17, as amended in Applicant's filing of November 6, 2003.

ATTACHMENT B

3. Following Applicants' request for reconsideration of the Petition Decision and the request for reconsideration of the office action, Examiner agreed to issue a non-final office action (referred to herein as "Non-Final Office Action") that will be comprised at least in part of a reissue the relevant portions of office action of October 24, 2003 for claims 4, 7 - 10, 16, and 18 - 19, which Applicants will resubmit as new claims 20 - 27, and the office action of November 7, 2003 for claims 1 - 3, 5, 6, 11 - 15 and 17 as amended in Applicant's filing of November 6, 2003.

4. Following Examiner's issue of the Non-Final Office Action, Applicants will schedule an interview with the Examiner to move the application forward.

Date: 7/16/07

Respectfully Submitted,

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission: 17

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

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ENCLOSURES *(Check all that apply)*

- [ ] Fee Transmittal Form
  - [x] Fee Attached
- [x] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- [ ] Proprietary Information
- [ ] Status Letter
- [x] Other Enclosure(s) (please identify below):

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CFR §1.137(b); two interview summaries; credit card payment form

Remarks

The credit card payment form authorizes payment of $300.00 for three additional independent claims. Applicants claim small entity status. This transmittal is being faxed to central fax number 571-273-8300. Please send a confirmation of receipt to fax number 877-369-2792.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Wenger Law Offices		
Signature			
Printed name	Patricia A. Wenger		
Date	July 16, 2007	Reg. No.	42,218

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Patricia A. Wenger	Date	July 16, 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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OFFICE OF PETITIONS

In re Application of	:	
George Brainard	:	
Application No. 09/853428	:	DECISION ON PETITION
Filing or 371(c) Date: 05/10/2001	:	
Attorney Docket Number:	:	
BRA01-NP002	:	

This is a Decision in response to the Petition to Revive an Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b), filed July 16, 2007. The delay in treating this petition is regretted.

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed October 24, 2003, and re-mailed November 7, 2003. The Office action set a three (3) month period for reply.

Applicant filed an Amendment on November 10, 2003, and a Notice of Appeal on May 10, 2004; however, Applicant failed to file a brief in support of Appeal. Since no claims were allowed, the application became abandoned for failure to timely and properly reply to the non-final Office action mailed November 7, 2003, on February 8, 2004.

Applicant filed a petition, Request for Continued Examination ("RCE"), a "Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003", and "Supplemental Amendment, Petition and Fee to add Originally Erroneously Named Inventors in Declaration (37 C.F.R. § 1.48(a)", on August 1, 2006. In a Decision mailed January 30, 2007, Petitioner was advised of the requirements for a grantable petition to correct inventorship under 37 CFR 1.48. The Decision referred Applicant's Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003, to the Examiner. The Request for Reconsideration of Letter Restarting Period of Response Mailed November 7, 2003, was referred to the Examiner, who, in a Decision mailed May 10, 2007, dismissed the request.

The petition under 37 CFR 1.137(b)

A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Regarding a RCE, an applicant cannot request continued examination of an application until after prosecution in the application is closed. See 37 CFR 1.114(a). Prosecution in an application is closed if the application is under appeal, or the last Office action is a final action (37 CFR 1.113), a notice of allowance (37 CFR 1.311), or an action that otherwise closes prosecution in the application (e.g., an Office action under Ex parte Quayle, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935)).

In this instance, the application became abandoned for failure to timely and properly reply to the non-final Office action, mailed October 24, 2003, and re-mailed November 7, 2003. As such, prosecution of the application is not closed, and the RCE is not a proper reply to the Office action.

The MPEP further provides that "[i]f prosecution in the application is not closed, applicant will be notified of the improper RCE and any amendment/reply will be entered. Thereafter, the application will be forwarded to the examiner for consideration of the amendment/reply under 37 CFR 1.111. MPEP 706.07(h).

In view of the above, the petition to revive the application is granted. The application is being referred to Technology Center Art Unit for consideration of the amendment filed with the petition on July 16, 2007. A refund of the RCE fee has been scheduled via Treasury Check.

Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

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Request for Continued Examination (RCE) Transmittal

Address to:
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Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

   a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

      i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

      ii. ☐ Other _____

   b. ☑ Enclosed

      i. ☑ Amendment/Reply

      ii. ☐ Affidavit(s)/ Declaration(s)

      iii. ☐ Information Disclosure Statement (IDS)

      iv. ☑ Other Request for reconsideration

2. **Miscellaneous**

   a. ☑ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of 3 months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

   b. ☑ Other Do not enter the 11/06/2003 Amendments/submission

3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

   a. ☐ The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to Deposit Account No. _____. I have enclosed a duplicate copy of this sheet.

      i. ☑ RCE fee required under 37 CFR 1.17(e)

      ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)

      iii. ☑ Other suspension fee (37 CFR 1.17(i)

   b. ☐ Check in the amount of $ _____ enclosed

   c. ☑ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Signature		Date	August 1, 2006
Name (Print/Type)	Patricia A. Wenger	Registration No.	42,218

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Signature			
Name (Print/Type)	Patricia A. Wenger	Date	August 1, 2006

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

08/03/2006 AWONDAF1 00000020 09853428
02 FC:2801 395.00 OP

08/03/2006 AWONDAF1 00000020 09853428
03 FC:1464 130.00 OP

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 09/18/07

2 Serial/Patent # 09/853,428

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
	Petition			$
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
X	Other	IFW	08/01/06	$ 395.00

7 TOTAL AMOUNT OF REFUND $ 395.00

8 TO BE REFUNDED BY:

X	Treasury Check
	Credit Deposit A/C #:

9 [ ][ ] -- [ ][ ][ ][ ]

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

RCE Improper: prosecution not closed.

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Derek L. Woods TITLE: Attorney

SIGNATURE: /Derek L. Woods/ PHONE: 2-3232

OFFICE: Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: [signature] DATE: 9/19/07

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

Office of Finance
Refund Branch
Crystal Park One, Room 802B

FORM PTO 1577
(01/90)

PATENT APPLICATION FEE DETERMINATION RECORD
Effective October 1, 2000

plication or Docket Number: 09/853 428

CLAIMS AS FILED - PART I

	(Column 1)	(Column 2)
TOTAL CLAIMS	19	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	19 minus 20=	* —
INDEPENDENT CLAIMS	13 minus 3 =	* 10
MULTIPLE DEPENDENT CLAIM PRESENT		☐

* If the difference in column 1 is less than zero, enter "0" in column 2

SMALL ENTITY TYPE ☐		OR	OTHER THAN SMALL ENTITY	
RATE	FEE		RATE	FEE
BASIC FEE	355.00	OR	BASIC FEE	710.00
X$ 9=		OR	X$18=	
X40=	400	OR	X80=	
+135=		OR	+270=	
TOTAL	755	OR	TOTAL	

CLAIMS AS AMENDED - PART II

11-10-3

AMENDMENT A	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
Total	* 11	Minus	** 20	= —
Independent	* 8	Minus	*** 13	= —
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM				☐

BEST AVAILABLE COPY

SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X$ 9=		OR	X$18=	
X40=		OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

7-16-02

AMENDMENT B	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
Total	* 19	Minus	** 20	= 0
Independent	* 16	Minus	*** 13	= 3
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM				☐

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X$ 9=		OR	X$18=	
200.00 X40=	300.00	OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

AMENDMENT C	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA
Total	*	Minus	**	=
Independent	*	Minus	***	=
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM				☐

RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
X$ 9=		OR	X$18=	
X40=		OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

* If the entry in column 1 is l ss than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3."
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

44321 7590 10/29/2007
PATRICIA A. WENGER
201 NORTH JACKSON STREET
MEDIA, PA 19063

EXAMINER
GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
3739	

MAIL DATE	DELIVERY MODE
10/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/853,428	BRAINARD, GEORGE	
	Examiner	Art Unit	
	Roy D. Gibson	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5,6,11-15,17 and 20-27* is/are pending in the application.

4a) Of the above claim(s) *3,6,15,17,20 and 23-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5,11-14,21,22 and 27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Formal Matters

This application has been revived effective 9/20/2007. The examiner has reconsidered the arguments presented 11/10/2003 regarding the wavelength range of 435-488 nm (this range relates to the top 25% sensitivity range for human melatonin suppression as illustrated in Figure 11) and now accepts this range for examination. Claims 1-3, 5, 6, 11-15, 17 and 20-27 are currently pending.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1, 2, 5, 11, 12, 13, 14, 21, 22 and 27 are drawn to a method of treating or preventing a light responsive disorder, classified in class 607, subclass 88.

II. Claims 3, 6, 15, 17, 20, 23, 24-26 are, drawn to a method of minimizing, circadian and neuro-endocrine stimulation, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are directed to related treatment methods, however. the related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant

case, the inventions as claimed are not capable of use together because the claims of invention I transmit a wavelength range of 435-488 nm, while the claims of invention II excludes or blocks wavelengths 435-488 nm. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Patricia Wenger on 10/3/2007 a provisional election was made with traverse to prosecute the invention of Group I, claims 1, 2, 5, 11, 12, 13, 14, 21, 22 and 27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 6, 15, 17, 20, 23, 24-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

Claims 1, 5, 11 and 13 disclose a "peak sensitivity" of emitted wavelengths from the light source. The examiner assumes this should be a "peak <u>intensity</u>" of emitted wavelengths from the light source.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 11, 12, 13, 14, 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerdt (6,235,046).

Regarding claims 1, 2 and 5, Gerdt discloses a method of treating or preventing a light responsive disorder in a mammal, comprising administration of a therapeutically effective amount of light to said mammal, said light being generated by a light system, wherein said light system emits (light entering the eye) a balance of wavelengths to stimulate a circadian system of the mammal, said balance of wavelengths having a peak intensity ranging from about 425-445 nm (which falls within the range of 435-488 nm); wherein said light responsive disorder is seasonal affective disorder (SAD) and col. 1, lines 9-43, col. 4, lines 4-49, col. 8, line 54-col. 9, line 35.

Further to claims 11-14 and 21-22, Gerdt discloses a transparent or translucent composition (depending upon the thickness of the layers) comprising at least one light filtering component, namely a filter that transmits at a peak of 435 nm with a 10 nm band-pass (which falls within the range of 435-488 nm) and blocks all other wavelengths and col. 9, lines 22-35).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hegyi (5,235,178). Hegyi discloses a light sensor with diffuser whereby the electrical output signal is representative of a response characteristic applied to the input light which corresponds to that of a human eye or is equivalent to a light meter system comprising a light metering device configured to match wavelength sensitivity of the human eye (wavelength range at half maximum of about 520-605 nm) and col. 4, line 1-col. 5, line 20). The peak sensitivity wavelength range of 425-505 nm can be readily be obtained as required by an appropriate filter with that transmission range as is well known in the art of band-pass filters.

Note also that any typical commercial light or exposure meter can be readily modified for peak sensitivity in the wavelength range of 425-50 nm by an appropriate filter with that transmission range as is well known in the art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lewy et al. (6,069,164) disclose methods for treating circadian rhythm phase disturbances including the use of goggles or sunglasses capable of

filtering blue and green wavelengths (450-575 nm) which are the most active in suppressing melatonin production: col. 27, lines 40-53).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Roy D. Gibson

/Roy D. Gibson/
Primary Examiner
Art Unit 3739

October 24, 2007

Notice of References Cited	Application/Control No. 09/853,428	Applicant(s)/Patent Under Reexamination BRAINARD, GEORGE	
	Examiner Roy D. Gibson	Art Unit 3739	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,069,164	05-2000	Lewy et al.	514/415
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Search Notes

Application/Control No.	Applicant(s)/Patent under Reexamination
09/853,428	BRAINARD, GEORGE
Examiner	**Art Unit**
Roy D. Gibson	3739

SEARCHED

Class	Subclass	Date	Examiner
updated	previous	10/17/2007	RDG

INTERFERENCE SEARCHED

Class	Subclass	Date	Examiner

SEARCH NOTES (INCLUDING SEARCH STRATEGY)

	DATE	EXMR
EAST	10/17/2007	RDG

EAST Search History

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	139	(suppres$ with melatonin) and (light wavelength) and disorder	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/03 08:10
L3	61	1 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/03 08:10
L4	34	3 and ("435" "440" "450" "460" "470" "480" "488")	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/03 07:35
L5	4	("6235046").URPN.	USPAT	OR	OFF	2007/10/03 07:41
L6	9	("4600723" | "4665086" | "4687763" | "5163426" | "5167228" | "5176133" | "5242941" | "5420152" | "5591768").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2007/10/03 07:59
L7	2	("5060062" | "5805267").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2007/10/03 08:01
L8	2	("5923398").URPN.	USPAT	OR	OFF	2007/10/03 08:02
L9	1	("4858609").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2007/10/03 08:03
L10	12	("5447527").URPN.	USPAT	OR	OFF	2007/10/03 08:04
L11	50	(suppres$ with melatonin) and (light with wavelength) and disorder	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/03 08:10
L12	17	11 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/03 08:10
L13	3	("3826751" | "4783361").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2007/10/03 08:17
L14	6	("5083858").URPN.	USPAT	OR	OFF	2007/10/03 08:17

EAST Search History

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	2	("20010056293").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:29
L4	670	(light adj meter) and ("425" "430" "435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485" "490" "500" "505")	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:38
L5	338	4 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:04
L7	4	5 and sad	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:44
L8	104	5 and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:37
L9	112	5 and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 12:37
L10	4	(light adj meter) with ("425" "430" "435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485" "490" "500" "505") with wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 14:43
L11	1	10 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:39
L12	46	(light adj meter) with wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 14:54
L13	31	12 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:44
L14	587	(light adj meter) and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 12:44

EAST Search History

L15	254	14 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:44
L16	1	15 and sad	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:46
L17	107	15 and (sensitivity)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 12:47
L18	54	17 and blue	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:00
L19	19958	("238").CLAS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:01
L20	68	(d16/238).CCLS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:02
L21	0	(354/410).CCLS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:02
L22	0	(354/410).CCLS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:03
L23	0	(light exposure) adj meter and "354"/$.ccls.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:03
L24	3799	(light exposure) adj meter	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:10
L25	549	24 and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:04
L26	299	25 and blue	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:04

EAST Search History

L27	135	26 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 14:55
L28	12	((light exposure) adj meter) with wavelength and blue	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:13
L29	6	28 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:26
L30	32	((light exposure) adj meter) with wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:15
L31	24	30 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:14
L32	0	(visible adj (light exposure) adj meter) with wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:23
L33	8	(visible adj (light exposure) adj meter) and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 13:19
L34	260	(356/443).CCLS.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:19
L35	12	((light exposure) adj meter) with wavelength and blue	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:34
L36	2	("20060028639").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:26
L37	44	((light exposure) adj meter) and 356/218.ccls.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:43
L38	27	37 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:44

EAST Search History

L39	2	38 and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 13:36
L40	12	("3879137").URPN.	USPAT	OR	OFF	2007/10/17 13:41
L41	1	("3798500").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2007/10/17 13:42
L42	127	wavelength and 356/218.ccls.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:44
L43	71	42 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 13:44
L44	7	("3903422" | "4291979" | "4500205" | "5644385" | "5800348" | "5885213" | "6122042").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2007/10/17 13:50
L45	4	((light exposure) adj meter) with ("425" "430" "435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485" "490" "500" "505") with wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 14:44
L46	2132754	((light exposure) adj meter) with wavelength and spectral response	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 14:54
L47	0	((light exposure) adj meter) with wavelength with (spectral adj response)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 14:55
L48	31	((light exposure) adj meter) and wavelength with (spectral adj response)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2007/10/17 14:55
L49	10	48 and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2007/10/17 15:06

3739

OIPE IAP88 MAY 0 8 2008 PATENT & TRADEMARK OFFICE

PTO/SB/21 (01-08)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09,853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard, George
Art Unit	3739
Examiner Name	Gibson, Roy D.
Attorney Docket Number	

Total Number of Pages in This Submission: 15

ENCLOSURES *(Check all that apply)*

- [x] Fee Transmittal Form
  - [x] Fee Attached
- [x] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [x] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- [ ] Proprietary Information
- [ ] Status Letter
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Check in the amount of $525.00
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return postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Wenger Law Offices		
Signature			
Printed name	Patricia A. Wenger		
Date	April 29, 2008	Reg. No.	42,218

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Patricia A. Wenger	Date	April 29, 2008

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Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2008

☑ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 325.00

Complete if Known	
Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard, George
Examiner Name	Gibson, Roy D.
Art Unit	3739
Attorney Docket No.	

METHOD OF PAYMENT (check all that apply)

☑ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below
☐ Charge fee(s) indicated below, **except for the filing fee**
☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17
☐ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fees Paid ($)**
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	**Fee ($)**	**Small Entity Fee ($)**
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	210	105
Multiple dependent claims	370	185

Total Claims 32 - 20 or HP = **Extra Claims** 12 x **Fee ($)** 25.00 = **Fee Paid ($)** 300.00
HP = highest number of total claims paid for, if greater than 20.

Indep. Claims _____ - 3 or HP = **Extra Claims** _____ x **Fee ($)** _____ = **Fee Paid ($)** _____
HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims
Fee ($) _____ **Fee Paid ($)** _____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $260 ($130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets _____ - 100 = **Extra Sheets** _____ / 50 = **Number of each additional 50 or fraction thereof** _____ (round up to a whole number) x **Fee ($)** _____ = **Fee Paid ($)** _____

4. OTHER FEE(S) **Fees Paid ($)**

Non-English Specification, $130 fee (no small entity discount) _____

Other (e.g., late filing surcharge): _____ _____

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 42,218	Telephone 610-566-3040
Name (Print/Type)	Patricia A. Wenger		Date April 29, 2008

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR : George Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

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05/08/2008 SDENBOB3 00000013 09853428
02 FC:2202 300.00 OP

Honorable Commissioner for Patents
Alexandria, VA 22313-1450:

RESPONSE TO OFFICE ACTION DATED OCTOBER 29, 2007, INTERVIEW SUMMARIES, AND CLAIM AMENDMENTS

I. Interview Summary for Interview on March 26, 2008

Present were George Brainard, Gena Glickman, Patricia A. Wenger, and Roy D. Gibson. Applicants provided information including a presentation and authoritative references to Examiner to point out that Applicants' claims 1, 2, 5, 11 - 14, 21, and 22 relate to a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435 - 488 nm. In addition, among other arguments, Applicants pointed out to the Examiner that Gerdt's (6,235,046) invention teaches blocking, rather than emitting, a peak of light at 435 nm. Without accepting that Gerdt teaches blocking light having a peak intensity in the range of 430 - 440 nm, Applicants' further pointed out that Gerdt's invention would teach blocking, rather than emitting, light at the range of 430 - 440 nm, while Applicants' claims 1, 2, 5, 11 - 14, 21, and 22 relate to a spectral composition of at least one enhanced spectral

region comprising at least one peak of emitted light within the range of 435-488 nm. It is Applicants understanding that the Examiner withdrew from his position in the Office Action that Gerdt's invention teaches blocking light having a peak intensity in the range of 425 - 445 nm.

In addition, among other information provided, Applicants provided a presentation and authoritative references to Examiner to point out that Applicants' findings relating to the range of optical radiation relating to the stimulation at least one of the mammalian circadian, photoneural, neuroendocrine or neurobehavioral systems were not expected. It is Applicants' understanding that arguments presented, including those pointing out that the findings were unexpected, overcame the Examiner's rejection that Claim 27 is unpatentable under 35 U.S.C. section 103(a) as being unpatentable over Hegyi (5,235,178) or typical commercial light or exposure meters.

II. Interview Summary for Telephone Interview on March 31, 2008

Examiner made reference to Vreman, et al. U.S. patent number 6,350, 275 in relation to claims 1, 2, 5, 11 - 14, 21, and 22. Applicants pointed out to the Examiner that contrary to Applicants' invention, Vreman, et al. teach mounting the light source on the body of the user. It is Applicants' understanding that the Examiner would be satisfied if Applicants amended claims 1, 2, 5, 11 - 14, 21, and 22, to include the limitation that that the light source is not mounted on the body of the at least one mammal.

III. Interview Summary for Telephone Interviews on April 16, 2008 and April 28, 2008

On April 16, 2008, Examiner made reference to Teicher, et al., U.S. patent number 6,554,439, as prior art in relation to claims 1, 2, 5, 11 - 14, 21, 22 and 27. On

April 28, 2008, Applicants pointed out to the Examiner that Applicants' provisional application, the benefit of which was claimed in the current application, was filed on May 10, 2000; which is prior to the filing date of the Teicher et al., U.S. patent number 6,554,439. As a result, the Examiner will refrain from considering Teicher, et al., U.S. patent number 6,554,439, as prior art.

IV. RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

On October 3, 2007, Applicant elected claims 1, 2, 5, 11, 12, 13, 14, 21, 22, and 27 for examination without prejudice, and with traverse. Applicant submitted that it would not be a serious burden on the Examiner if the election were not required.

V. CLAIM OBJECTIONS

The term "peak sensitivity" is not correct, and Applicants have amended the claims to remove the term "peak sensitivity". Applicants do not either agree or disagree with Examiner's assumption relating to the term "peak intensity" as Applicants chose other words in their amendments where "peak sensitivity" was removed.

VI. CLAIM REJECTIONS – 35 USC § 102

Applicants traverse Examiner's rejection of claims 5, 21, and 22 which were rejected under 35 U.S.C. § 102(e). Applicants currently cancel claims 5, 21 and 22, which Applicants intend to resubmit for further prosecution in a continuation application.

Consistent with Applicants' interview with Examiner on March 26, 2008 and telephone interview of March 31, 2008, Applicants currently: cancel claim 1 that is resubmitted in amended form as claim 31, cancel claim 11 that is resubmitted in amended form as claim 36, and cancel claim 13 that is resubmitted in amended form as claim 38; all of the amendments include the limitation that that the light source is not mounted on

the body of the at least one mammal, and clearly state the limitation of a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm. In addition, claims 2, 12 and 14 are amended to include the limitation that that the light source is not mounted on the body of the at least one mammal, and clearly state the limitation of a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm.

All of the amendments to claims 2, 12, 14 and 31 - 56, other than the amendments to include the limitation that that the light source is not mounted on the body of the at least one mammal, are to better claim example embodiments of the invention and are not narrowing amendments made for reasons related to patentability, such as, overcoming applied art.

Applicants further note that claims 2, 12 and 14 now depend from allowable claims.

Claim 27 has been canceled and rewritten as claims 28 – 30 to better claim example embodiments of the invention and are not narrowing amendments made for reasons related to patentability, such as, overcoming applied art.

VII. AMENDMENTS

Amend the claims as follows:

Claim 1. (canceled)

Claim 2. (currently amended) The method of Claim [[1]] 31, wherein said light responsive disorder is at least one of the group of seasonal affective disorders (SAD), [[a]] sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claims 3 - 11. (canceled)

Claim 12. (currently amended) The method of Claim [[11]] 36, wherein said light responsive disorder is at least one of the group of seasonal affective disorders (SAD), [[a]] sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claim 13. (canceled)

Claim 14. (currently amended) The method of Claim [[13]] 38, wherein said light responsive disorder is at least one of the group of seasonal affective disorders (SAD), [[a]] sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claims 15 - 27. (canceled)

Claim 28. (new) A meter for measuring optical radiation for stimulating at least one of the mammalian circadian, photoneural, neuroendocrine or neurobehavioral systems, said meter system comprising at least one meter, said at least one meter being configured to measure optical radiation based on the spectral sensitivity of the photoreceptor system for at least one of the mammalian circadian, photoneural, neuroendocrine or

neurobehavioral systems, wherein said spectral sensitivity has at least one peak of sensitivity within the range of 425 - 505 nm.

Claim 29. (new) The meter of claim 28, wherein said at least one meter is configured to measure therapeutically effective light, whereby said measured therapeutically effective light stimulates the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said mammal and at least treats or prevents at least one light responsive disorder in said at least one mammal.

Claim 30. (new) The meter of claim 29, wherein said at least one meter is configured to measure therapeutically effective light, whereby said measured therapeutically effective light stimulates the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said mammal and treats and prevents at least one light responsive disorder in said at least one mammal.

Claim 31. (new) A method of treating or preventing at least one light responsive disorder in at least one mammal, said method comprising the steps of:

utilizing at least one light source, said at least one light source emitting optical radiation;

causing said optical radiation to be therapeutically effective light, said therapeutically effective light comprising a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm;

exposing at least a portion of the retina of at least one eye of at least one mammal to said therapeutically effective light such that said light source is not mounted on the body of said at least one mammal;

stimulating the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said at least one mammal; and, enabling at least the treatment or the prevention of at least one light responsive disorder in said at least one mammal.

32. (new) The method of Claim 31, wherein said therapeutically effective light further comprises a therapeutically effective amount of light.

33. (new) The method of Claim 31, said method further comprising enabling the treatment of at least one light responsive disorder in said at least one mammal.

34. (new) The method of Claim 33, said method further comprising providing at least one light filtering component in conjunction with said at least one light source; and causing said at least one light filtering component to emit therapeutically effective light.

35. (new) The method of claim 34 wherein said method further comprises providing at least one transparent composition in conjunction with said at least one light filtering component.

36. (new) The method of 34 wherein said at least one light filtering component further comprises at least one transparent composition.

37. (new) The method of claim 34 wherein said method further comprises providing at least one translucent composition in conjunction with said at least one light filtering component.

38. (new) The method of 34 wherein said light filtering component further comprises at least one translucent composition.

39. (new)) The method of Claim 31, said method further comprising enabling the prevention of at least one light responsive disorder in said at least one mammal.

40. (new) The method of Claim 39, said method further comprising providing at least one light filtering component in conjunction with said at least one light source; and causing said at least one light filtering component to emit therapeutically effective light.

41. (new) The method of claim 40 wherein said method further comprises providing at least one transparent composition in conjunction with said at least one light filtering component.

42. (new) The method of claim 40 wherein said at least one light filtering component further comprises at least one transparent composition.

43. (new) The method of claim 42, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

44. (new) The method of claim 40 wherein said method further comprises providing at least one translucent composition in conjunction with said at least one light filtering component.

45. (new) The method of 40 wherein said at least one light filtering component further comprises at least one translucent composition.

46. (new) The method of claim 45, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

47. (new) A method of treating and preventing at least one light responsive disorder in at least one mammal, said method comprising the steps of:

utilizing at least one light source, said at least one light source emitting optical radiation;

causing said optical radiation to be therapeutically effective light, said therapeutically effective light comprising a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm;

exposing at least a portion of the retina of at least one eye of at least one mammal to said therapeutically effective light such that said light source is not mounted on the body of said at least one mammal;

stimulating the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said at least one mammal; and,

enabling the treatment and prevention of at least one light responsive disorder in said at least one mammal.

48. (new) The method of Claim 47, wherein said therapeutically effective light further comprises a therapeutically effective amount of light.

49. (new) The method of claim 47, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

50. (new) The method of claim 47, said method further comprising providing at least one light filtering component in conjunction with said at least one light source; and causing said at least one light filtering component to emit therapeutically effective light.

51. (new) The method of claim 50 wherein said method further comprises providing at least one transparent composition in conjunction with said at least one light filtering component.

52. (new) The method of 50 wherein said at least one light filtering component further comprises at least one transparent composition.

53. (new) The method of claim 52, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

54. (new) The method of claim 50 wherein said method further comprises providing at least one translucent composition in conjunction with said at least one light filtering component.

55. (new) The method of 50 wherein said light filtering component further comprises at least one translucent composition.

56. (new) The method of Claim 55, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

VIII. CONCLUSION

In view of the above, Applicant maintains that all points raised by the Examiner relating to claims 2, 12, 14 and 28 - 56 have been answered. Claims 5, 21, and 22 have been canceled and Applicants intend to resubmit them in a continuation application that Applicants intend to file while the current application is pending. Claims 3, 6, 15, 17, 20, and 23 – 26 have been canceled pursuant to Applicants' election on October 3, 2007 of claims 1, 2, 5, 11, 12, 13, 14, 21, 22, and 27 for examination without prejudice, and with traverse. Claims 3, 6, 15, 17, 20, 23, 24, 25 and/or 26 may be rewritten and added to the current application if Examiner accepts Applicants' traverse that it would not be a serious burden on the Examiner if the election were not required. Alternatively, claims 3, 6, 15, 17, 20, 23, 24, 25 and/or 26 may be included in a divisional application.

Claims 2, 12, 14 and 28 - 56 now presented are in condition for allowance.

Reconsideration and favorable action are earnestly solicited.

Date: April 29, 2008

Respectfully Submitted,

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Media, PA 19063
610-566-3040
pwenger@legalpatent.com

3739

OIPE IAP88 MAY 08 2008 PATENT & TRADEMARK OFFICE

PTO/SB/22 (01-08)
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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) **FY 2008** *(Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)*	Docket Number (Optional)
Application Number 09/853,428	Filed May 10, 2001
For Photoreceptor System for Melatonin Regulation and Phototherapy	
Art Unit 3739	Examiner Gibson, Roy Dean

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

		Fee	Small Entity Fee	
☐	One month (37 CFR 1.17(a)(1))	$120	$60	$
☐	Two months (37 CFR 1.17(a)(2))	$460	$230	$
☒	Three months (37 CFR 1.17(a)(3))	$1050	$525	$ 525.00
☐	Four months (37 CFR 1.17(a)(4))	$1640	$820	$
☐	Five months (37 CFR 1.17(a)(5))	$2230	$1115	$

☒ Applicant claims small entity status. See 37 CFR 1.27.

☒ A check in the amount of the fee is enclosed.

05/08/2008 SDENBOB3 00000013 09853428
01 FC:2253 525.00 OP

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number _____. I have enclosed a duplicate copy of this sheet.

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I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).

☒ attorney or agent of record. Registration Number 42,218

☐ attorney or agent under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Patricia A. Wenger — Signature
4/29/2008 — Date
Patricia A. Wenger — Typed or printed name
610-566-3040 — Telephone Number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 09/853,428	Filing Date 05/10/2001	☐ To be Mailed

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	SMALL ENTITY ☐ RATE ($)	FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A			N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A			N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A			N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	x $ =		OR	x $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	x $ =			x $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).						
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))							
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 05/08/2008	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	SMALL ENTITY RATE ($)	ADDITIONAL FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	* 32	Minus	** 20	= 12	x $ =		OR	x $50=	600
Independent (37 CFR 1.16(h))	* 3	Minus	***3	= 0	x $ =		OR	x $210=	0
☐ Application Size Fee (37 CFR 1.16(s))									
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
					TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	600

AMENDMENT	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)		RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	*	Minus	**	=	x $ =		OR	x $ =	
Independent (37 CFR 1.16(h))	*	Minus	***	=	x $ =		OR	x $ =	
☐ Application Size Fee (37 CFR 1.16(s))									
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
					TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

Legal Instrument Examiner:
/STEFANIE BRYCE/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

44321 7590 08/01/2008
PATRICIA A. WENGER
201 NORTH JACKSON STREET
MEDIA, PA 19063

EXAMINER
GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
3739	

MAIL DATE	DELIVERY MODE
08/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/853,428	BRAINARD, GEORGE	
	Examiner	Art Unit	
	Roy D. Gibson	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 May 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,12,14 and 28-56* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,12,14,28-56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Objections

Claims 30 and 47-56 are objected to under 37 CFR 1.75 as being substantial duplicates of claims 29 and 31, 32, 2, 34-36 and 43-46 respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim 33 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a claim 31. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Note that the limitation of claim 33 is included in the last portion of claim 31 from which claim 33 depends.

Claims 34, 40 and 50 are objected to because in line 3, light filtering components do not "emit" light but "transmit" light. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 12, 14 and 31-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Searfoss et al. (5,265,598). Searfoss et al. disclose a method of treating

or preventing at least one light responsive disorder (SAD) in at least one mammal, said method comprising the steps of:

utilizing at least one light source, said at least one light source (16) emitting optical radiation;

causing said optical radiation to be therapeutically effective light in an effective amount, said therapeutically effective light comprising a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm (blue light filter on wheel of eight narrow band pass filters each with 10-20 nm width and a "peak" in the blue range (450-510 which overlaps the claimed range of 435-488 while the blue filter transmits the therapeutically effective light in an effective amount);

exposing at least a portion of the retina of at least one eye of at least one mammal to said therapeutically effective light such that said light source is not mounted on the body of said at least one mammal;

stimulating the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said at least one mammal; and, enabling at least the treatment or the prevention of at least one light responsive disorder in said at least one mammal (col. 1, lines 14-52, col. 5, line 61-col. 6, line 20 and lines 36-49).

Further to claim 35-38 a typical blue or any color filter is a inherently made of a transparent substrate with various coating which are selected to provide a transmission of selected wavelengths of, in this case, 10-20 nm wide and peaking in the blue. Note

that the light filtering component would be transparent or translucent depending upon the thickness of the coating material(s). (See Sakamoto et al., patent no. 5,648,653 for details).,

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hegyi (5,235,178). Hegyi discloses a light sensor with diffuser whereby the electrical, output signal is representative of a response characteristic applied to the input light which corresponds to that of a human eye or is equivalent to a light meter system comprising a light metering device configured to match wavelength sensitivity of the human eye (col. 4, line 1-col. 5, line 20). The peak sensitivity wavelength range of 425-488 nm can be readily be obtained as required by an appropriate filter with that transmission range as is well known in the art of band pass filters.

Note also that any typical commercial light or exposure meter can be readily modified for peak sensitivity, in the wavelength range of 425-50 nm by an appropriate filter with that transmission range as is well known in the art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Daffer et al. (5,645,578) disclose a light therapy device with blue lights positioned to expose the patients eyes to treat SAD; Jung et al. (6,271,913) disclose am apparatus for measuring optical characteristics of an object; and Hinoda et al. (4,547,074) disclose a color sensing device including photo sensors matched with filters to measure light in the 400-500 nm range.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy D. Gibson/
Primary Examiner
Art Unit 3739

July 31, 2008

Notice of References Cited	Application/Control No. 09/853,428	Applicant(s)/Patent Under Reexamination BRAINARD, GEORGE	
	Examiner Roy D. Gibson	Art Unit 3739	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-5,265,598	11-1993	Searfoss et al.	607/88
*	B	US-5,648,653	07-1997	Sakamoto et al.	250/208.1
*	C	US-5,645,578	07-1997	Daffer et al.	607/91
*	D	US-4,547,074	10-1985	Hinoda et al.	356/405
*	E	US-6,271,913	08-2001	Jung et al.	356/73
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	09853428	BRAINARD, GEORGE
	Examiner	**Art Unit**
	Roy D Gibson	3739

SEARCHED

Class	Subclass	Date	Examiner
	updated previous	7/31/2008	/RDG/
356	213, 217, 218, 221and 227	7/31/2008	/RDG/
396	57	7/31/2008	/RDG/

SEARCH NOTES

Search Notes	Date	Examiner
EAST SEARCH (search provided by Hoa Pham in A.U. 2886)	7/30/2008	/RDG/

INTERFERENCE SEARCH

Class	Subclass	Date	Examiner

EAST Search History

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	16441	FILTER WITH ("425" "450" "475" "500" "505") AND LIGHT	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/27 09:44
L2	0	1 AND (LIGTH ADJ RESPONSIVE ADJ DISORDER)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/27 09:44
L3	0	1 AND (LIGHT ADJ RESPONSIVE ADJ DISORDER)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/27 09:45
L4	72	1 AND SAD	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/27 09:45
L5	28	4 AND @AD<"20000828"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/27 09:46
L6	3616	(BLUE ADJ FILTER) AND LIGHT AND @AD<"20000828"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/27 09:56
L7	1557	(BLUE ADJ FILTER) WITH LIGHT AND @AD<"20000828"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/27 09:57
L8	29	(BLUE ADJ FILTER) ADJ LIGHT AND @AD<"20000828"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/27 09:57
L9	292	7 and (eye retina)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/27 10:07

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EAST Search History

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L19	5627	(expos$3 irradiat$3 administer$3) with light with eye	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 13:11
L20	11	19 and (stimulat$3 with (circadian photoneural neuroendocrine))	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 13:37
L21	5	20 and @ad<"20000822"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 13:38
L22	2	21 and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 13:40
L23	3	(("5,167,228") or ("5,176,133")).PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/03/31 13:51
L24	3	20 and wavelength with ("400" "420" "430" "440" "450" "460" "470" "480" "490")	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 13:57
L25	12	("20030187486" | "5304212" | "5562719" | "6126294" | "6223071" | "6471716").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 14:00
L26	2668	19 and @ad<"20000822"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 14:04
L27	164	26 and wavelength with ("400" "420" "430" "440" "450" "460" "470" "480" "490")	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 14:06
L28	16	("4516110" | "4858609" | "4911166" | "5163426" | "5358503" | "5447528" | "5503637" | "5616140" | "5709645" | "5793405" | "5805267" | "5862167" | "5913883" | "5977566" | "6053936" | "6135117"). PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2008/03/31 14:29
L29	770236	26 and ("400" "420" "430" "440" "450" "460" "470" "480" "490") near 1 (nm nanometers)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 14:38

L30	684	26 and (("400" "420" "430" "440" "450" "460" "470" "480" "490") near 1 (nm nanometers))	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 14:38
L31	14	30 and 607/88-92.ccls.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/03/31 14:40

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EAST Search History

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L7	90	("20010056293" | "20020198576" | "20030069616" | "20040068305" | "20040093045" | "20040225340" | "20040249423" | "20040138726" | "20050015122" | "20050080464" | "20050159795" | "20060009822" | "4858609" | "4946452" | "5149184" | "5163426" | "5167228" | "5197941" | "5274403" | "5280625" | "5301090" | "5447527" | "5447528" | "5503637" | "5545192" | "5589741" | "5782895" | "5800479" | "5824024" | "5879155" | "5919217" | "5923398" | "6135117" | "6164787" | "6167648" | "6235046" | "6299632" | "6350275" | "6443977" | "6488698" | "6554439" | "6875225" | "6887260" | "6902296").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/04/16 08:20

4/16/08 8:31:25 AM
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EAST Search History

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	37922326	((light adj source) with blue) and sad and@ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/22 15:03
L2	2697	1 and (606/1-19 607/88-94.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/22 15:04
L3	553	2 and ("435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485")	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/22 15:06
L4	505	3 and method	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/22 15:07
L5	44	4 and (seasonal affective adj disprder)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/22 15:08
L6	48	4 and (seasonal affective adj disorder)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/22 15:08
L7	30	4 and (seasonal adj affective adj disorder)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/22 15:16
L8	5	((light adj source) with blue) and sad and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/22 15:16
L9	12	("3112886" | "3355982" | "3757101" | "3757103" | "4796160" | "5075823" | "5184881" | "5285362" | "5329435" | "5359498").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2008/07/22 15:19
L10	10	("6019476").URPN.	USPAT	OR	OFF	2008/07/22 15:21
L11	5	2 and ("435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485") near1 micron	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/22 15:24
L12	0	5 and ("435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485") near1 micron	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/22 15:25
L13	44	5 and (606/1-19 607/88-94.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/22 15:25
L14	48	6 and (606/1-19 607/88-94.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/22 15:25
L15	2	("20020080501").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/22 15:30

7/22/08 3:31:00 PM

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EAST Search History

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	2	("5125928").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 07:49
L2	2	("5047007").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 08:11
L3	2	("20060206109").PN.	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 08:22
L5	2	(white near1 light) with (blue near1 filter) and (peak adj wavelength) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 09:08
L6	5	(blue near1 filter) with (peak adj wavelength) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 09:09
L7	62	(blue near1 filter) and (peak adj wavelength) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 09:13
L8	24	7 and "450"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 09:13
L9	0	(blue near1 filter) and (peak adj wavelength) and 359/885.ccls. and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 09:15
L10	18	(blue near1 filter) and 359/885.ccls. and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 09:16
L11	22	("4837098").URPN.	USPAT	OR	OFF	2008/07/23 09:18
L12	20	("5214541").URPN.	USPAT	OR	OFF	2008/07/23 09:21
L13	748	359/885.ccls. and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 09:23
L14	2	13 and blue with (peak adj wavelength)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/23 09:24

7/23/08 9:26:14 AM
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EAST Search History

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L27	0	(blue adj fluorescent adj light) and sad and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:19
L28	93	(blue adj fluorescent adj light) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:19
L29	55	28 and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:20
L30	9	28 and (peak with wavelength)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:24
L31	304	((seasonal near1 affective near1 disorders) (SAD) (sleep near1 disorders) (circadian near1 disruption) (eating near1 disorders) (menstrual near1 cycle near1 disorders) (hormone-sensitive near1 cancers) (cardiovascular near1 disorders)) and (blue adj light) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:39
L32	37	31 and (peak with wavelength)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:41
L33	1406	(blue adj fluorescent) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:55
L34	534	33 and wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:55
L35	35	31 and 34	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:56
L36	116	(blue adj fluorescent adj (light tube bulb)) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:58
L37	11	36 and (peak with wavelength)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 14:58

L38	0	31 and 37	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 15:04
L39	8	31 and 36	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/29 15:04
L40	47	("2560808" | "2699771" | "4100415" | "4103175" | "4335724" | "5079262" | "5211938" | "5219998" | "5234940" | "5258453" | "5298502" | "5344434" | "5353799" | "5368841" | "5397770" | "5422093" | "5441531" | "5474528" | "5489279" | "5505726" | "5556612" | "5565685" | "5626631" | "5645578" | "5707401" | "5713845" | "5749830" | "5755751" | "5829448" | "5832931" | "5833612" | "5836999" | "5845640" | "5861020" | "5899882" | "5908415" | "5919217" | "5944748" | "5947959" | "5957960" | "5961543" | "5971918" | "5998597" | "6011563" | "6013053").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2008/07/29 15:05
L41	9	("6223071").URPN.	USPAT	OR	OFF	2008/07/29 15:07

7/29/08 3:17:28 PM
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L1	0	(light adj meter) and (blue "425" "460" "470" "480" "490" "500") and (@ad<"20000510" and 356/213,217, "218,221")	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/31 07:24
L2	0	(meter) and (blue "425" "460" "470" "480" "490" "500") and (@ad<"20000510" and 356/213,217, "218,221")	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/31 07:24
L3	0	(mlight adj meter) and (blue "425" "460" "470" "480" "490" "500") and (@ad<"20000510" and 356/213,217, "218,221". ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/31 07:25
L4	0	(mlight adj meter) and (blue "425" "460" "470" "480" "490" "500") and @ad<"20000510" and (356/213,217,218,221.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/31 07:25
L5	24	(meter) and (blue "425" "460" "470" "480" "490" "500") and @ad<"20000510" and (356/213,217,218,221.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/31 07:26
L6	3	("4182573" | "4364650" | "4395099").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2008/07/31 07:32
L7	5	("4671655").URPN.	USPAT	OR	OFF	2008/07/31 07:33
L8	9	("3727527" | "3883252" | "4132985" | "4262997" | "4291979" | "4401386" | "4656466" | "4671655" | "4748468").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2008/07/31 07:33
L9	6	("3883252").URPN.	USPAT	OR	OFF	2008/07/31 07:35
L10	1	((exposure light) adj meter) and (blue "425" "460" "470" "480" "490" "500") and @ad<"20000510" and (356/213,217,218,221 396/57. ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/31 07:48
L11	0	((exposure light) adj meter) with (blue) and @ad<"20000510" and (356/213,217,218,221 396/57. ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	OFF	2008/07/31 07:49
L12	0	((exposure light) adj meter) with (blue) and @ad<"20000510" and (356/213,217,218,221 396/57. ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:49

L13	0	(meter) with (blue) and @ad<"20000510" and (356/213,217,218,221 396/57.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:50
L14	2	(blue) and @ad<"20000510" and (356/213,217,218,221 396/57.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:50
L15	13	("425" "430" "435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485" "490" "495" "500" "505") and @ad<"20000510" and (356/213,217,218,221 396/57.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:51
L16	0	(("425" "430" "435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485" "490" "495" "500" "505") with wavelength) and @ad<"20000510" and (356/213,217,218,221 396/57.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:53
L17	20223	(("425" "430" "435" "440" "445" "450" "455" "460" "465" "470" "475" "480" "485" "490" "495" "500" "505") with wavelength) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:54
L18	17689	17 and (light radiation)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:54
L19	0	18 and pesk	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:54
L20	5931	18 and peak	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:55
L21	1237	18 and (peak adj wavelength)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:55
L22	1310	17 and (peak adj wavelength)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:55
L23	1237	22 and (light radiation)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:56
L24	0	23 and (356/213,217,218,221 396/57.ccls.)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:57
L25	148	23 and (spectral adj sensitivity)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:58
L26	92	23 and (spectral adj sensitivity) with wavelength	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 07:58

L27	18	26 and (photodetector photodiode)	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 08:01
L28	4	("3389265" | "3929398" | "3985449").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2008/07/31 08:04
L29	57	("4547074").URPN.	USPAT	OR	OFF	2008/07/31 08:05
L30	4	("3996461" | "4547074" | "5073008" | "5648653").PN.	US-PGPUB; USPAT; USOCR	OR	OFF	2008/07/31 08:10
L31	40	("3996461").URPN.	USPAT	OR	OFF	2008/07/31 08:12

7/31/08 8:15:25 AM
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EAST Search History

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L1	486	(spectral adj response) with (light exposure adj meter) and blue and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 10:20
L2	3	(spectral adj response) with ((light exposure) adj meter) and blue and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 10:21
L3	8	(spectral adj response) with ((light exposure) adj meter) and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 10:28
L4	43	(spectral adj response) and ((light exposure) adj meter) and blue and @ad<"20000510"	US-PGPUB; USPAT; EPO; JPO; DERWENT	OR	ON	2008/07/31 10:30
L5	108	("3327584" | "3436157" | "3507042" | "3555262" | "3743429" | "3748741" | "3778541" | "3986777" | "4054389" | "4115922" | "4125329" | "4184175" | "4207678" | "4241738" | "4278353" | "4290433" | "4324546" | "4382784" | "4411626" | "4464054" | "4487206" | "4505589" | "4568191" | "4575805" | "4616933" | "4654794" | "4666309" | "4687329" | "4773063" | "4798951" | "4823169" | "4836674" | "4878485" | "4881811" | "4917500" | "4957371" | "4986671" | "4988206" | "5028139" | "5040940" | "5095210" | "5142383" | "5159199" | "5164597" | "5166755" | "5229841" | "5245404" | "5306144" | "5308771" | "5329935" | "5369481" | "5377669" | "5383020" | "5386292" | "5392110" | "5401954" | "5401967" | "5404218" | "5410410" | "5410413" | "5428450" | "5450193"	US-PGPUB; USPAT; USOCR	OR	OFF	2008/07/31 10:36

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L6	33	("6271913").URPN.	USPAT	OR	OFF	2008/07/31 10:41

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OIPE IAP3 FEB 04 2009 PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

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Commissioner for Patents
Alexandria, VA 22313

RESPONSE TO OFFICE ACTION MAILED ON AUGUST 1, 2008 AND CLAIM AMENDMENTS

I. CLAIM OBJECTIONS

Applicants do not either agree or disagree with Examiner's position that claims 30, and 47 - 56 are substantially similar to claims 29 and 31, 32, 2, 34 - 36 and 43 -46 respectively, however Applicants withdraw claims 30 and 47 - 56 herein for reasons of efficiency and not for reasons of patentability; which Applicants may resubmit in a continuation application to be filed while the current application is pending.

Applicants do not either agree or disagree with Examiner's position that claim 33 is an improper dependent claim of claim 31, however Applicants withdraw claim 33 for reasons of efficiency and not for reasons of patentability; which Applicants may resubmit in a continuation application to be filed while the current application is pending.

In response to Examiner's request, Applicants have amended claims 34 and 40 to change the word "emit" to the word "transmit".

II. CLAIM REJECTIONS – 35 USC § 102

In response to Examiner's rejection of claims 2, 14, and 31 - 56, which were rejected under 35 U.S.C. § 102(b), Applicants amend claim 31 to include the following: "causing said optical radiation to be therapeutically effective by employing a pre-established spectral composition comprising at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm". Applicant's note that Searfoss et al. (5,265,598), among other differences, fails to teach causing optical radiation to be therapeutically effective by employing a pre-established spectral composition comprising at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm. Applicants further note that claims 32, 34 and 40 are amended to be placed in proper dependent form, and that claims 2, 12, 14, 32 and 34 - 46 now depend from allowable claims.

Applicants further traverse Examiner's reliance on common knowledge in the art pursuant to MPEP § 2144.03. Applicant traverses the Examiner's reliance on common knowledge because the Examiner's statement that "(blue light filter on wheel of eight narrow band pass filters each with 10-20 nm width and a "peak" in the blue range (450-510 which overlaps the claimed range of 435-488 while the blue filter <u>transmits</u> the therapeutically effective light in the effective amount)" is not capable of instant and unquestionable demonstration as being well-known. It is noted that Searfoss et al. (5,265,598) does not teach a blue light filter or the 435 – 488 nm waveband. The only color Searfoss et al. (5,265,598) specifically identifies is "green" which is mentioned three times in the claims, once in the Summary and once in the Description. Searfoss et al. (5,265,598) identifies no other colors in their application.

In addition, Applicants traverse the Examiner's reliance on common knowledge because the Examiner's statement that "a typical blue or any color filter is a inherently made of a transparent substrate with various coating which are selected to provide a transmission of selected wavelengths of, in this case, 10-20 nm wide and peaking in the blue. Note that the light filtering component would be transparent of translucent depending upon the thickness of the coating material(s)" is not capable of instant and unquestionable demonstration as being well-known. It is noted that Searfoss et al. (5,265,598) does not teach a blue light filter.

III. CLAIM REJECTIONS - 35 USC § 103

Applicants traverse Examiner's rejection of claims 28 - 30 which were rejected under 35 U.S.C. § 103, and Applicant withdraws claims 28 - 30 for reasons of efficiency and not for reasons of patentability; which Applicants intend to resubmit in a continuation application to be filed while the current application is pending.

IV. AMENDMENTS

Amend the claims as follows:

Claim 1. (canceled)

Claim 2. (previously presented) The method of Claim 31, wherein said light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claims 3 - 11. (canceled)

Claim 12. (previously presented) The method of Claim 36, wherein said light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claim 13. (canceled)

Claim 14. (previously presented) The method of Claim 38, wherein said light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

Claims 15 - 27. (canceled)

Claim 28. (withdrawn) A meter for measuring optical radiation for stimulating at least one of the mammalian circadian, photoneural, neuroendocrine or neurobehavioral systems, said meter system comprising at least one meter, said at least one meter being configured to measure optical radiation based on the spectral sensitivity of the photoreceptor system for at least one of the mammalian circadian, photoneural,

neuroendocrine or neurobehavioral systems, wherein said spectral sensitivity has at least one peak of sensitivity within the range of 425 - 505 nm.

Claim 29. (withdrawn) The meter of claim 28, wherein said at least one meter is configured to measure therapeutically effective light, whereby said measured therapeutically effective light stimulates the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said mammal and at least treats or prevents at least one light responsive disorder in said at least one mammal.

Claim 30. (withdrawn) The meter of claim 29, wherein said at least one meter is configured to measure therapeutically effective light, whereby said measured therapeutically effective light stimulates the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said mammal and treats and prevents at least one light responsive disorder in said at least one mammal.

Claim 31. (currently amended) A method of <u>at least</u> treating or preventing at least one light responsive disorder in at least one mammal, said method comprising the steps of: utilizing at least one light source, said at least one light source emitting optical radiation; causing said optical radiation to be therapeutically effective <u>by employing a pre-established spectral composition</u> ~~light, said therapeutically effective light~~ comprising ~~a spectral composition of~~ at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm;

exposing at least a portion of the retina of at least one eye of at least one mammal to said pre-established spectral composition of ~~therapeutically effective light~~ optical radiation such that said light source is not mounted on the body of said at least one mammal;

stimulating the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said at least one mammal; and,

enabling at least the treatment or the prevention of at least one light responsive disorder in said at least one mammal.

32. (currently amended) The method of Claim 31, wherein said therapeutically effective optical radiation ~~light~~ further comprises a therapeutically effective amount of light.

33. (withdrawn) The method of Claim 31, said method further comprising enabling the treatment of at least one light responsive disorder in said at least one mammal.

34. (currently amended) The method of Claim 31 [[33]], said method further comprising providing at least one light filtering component in conjunction with said at least one light source; and

causing said at least one light filtering component to ~~emit~~ transmit therapeutically effective optical radiation ~~light~~.

35. (previously presented) The method of claim 34 wherein said method further comprises providing at least one transparent composition in conjunction with said at least one light filtering component.

36. (previously presented) The method of 34 wherein said at least one light filtering component further comprises at least one transparent composition.

37. (previously presented) The method of claim 34 wherein said method further comprises providing at least one translucent composition in conjunction with said at least one light filtering component.

38. (previously presented) The method of 34 wherein said light filtering component further comprises at least one translucent composition.

39. (previously presented) The method of Claim 31, said method further comprising enabling the prevention of at least one light responsive disorder in said at least one mammal.

40. (currently amended) The method of Claim 39, said method further comprising providing at least one light filtering component in conjunction with said at least one light source; and

causing said at least one light filtering component to ~~emit~~ transmit therapeutically effective optical radiation ~~light~~.

41. (previously presented) The method of claim 40 wherein said method further comprises providing at least one transparent composition in conjunction with said at least one light filtering component.

42. (previously presented) The method of claim 40 wherein said at least one light filtering component further comprises at least one transparent composition.

43. (previously presented) The method of claim 42, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

44. (previously presented) The method of claim 40 wherein said method further comprises providing at least one translucent composition in conjunction with said at least one light filtering component.

45. (previously presented) The method of 40 wherein said at least one light filtering component further comprises at least one translucent composition.

46. (previously presented) The method of claim 45, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD),

sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

47. (withdrawn) A method of treating and preventing at least one light responsive disorder in at least one mammal, said method comprising the steps of:
utilizing at least one light source, said at least one light source emitting optical radiation;
causing said optical radiation to be therapeutically effective light, said therapeutically effective light comprising a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm;
exposing at least a portion of the retina of at least one eye of at least one mammal to said therapeutically effective light such that said light source is not mounted on the body of said at least one mammal;
stimulating the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said at least one mammal; and,
enabling the treatment and prevention of at least one light responsive disorder in said at least one mammal.

48. (withdrawn) The method of Claim 47, wherein said therapeutically effective light further comprises a therapeutically effective amount of light.

49. (withdrawn) The method of claim 47, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep

disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

50. (withdrawn) The method of claim 47, said method further comprising providing at least one light filtering component in conjunction with said at least one light source; and causing said at least one light filtering component to emit therapeutically effective light.

51. (withdrawn) The method of claim 50 wherein said method further comprises providing at least one transparent composition in conjunction with said at least one light filtering component.

52. (withdrawn) The method of 50 wherein said at least one light filtering component further comprises at least one transparent composition.

53. (withdrawn) The method of claim 52, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

54. (withdrawn) The method of claim 50 wherein said method further comprises providing at least one translucent composition in conjunction with said at least one light filtering component.

55. (withdrawn) The method of 50 wherein said light filtering component further comprises at least one translucent composition.

56. (withdrawn) The method of Claim 55, wherein said at least one light responsive disorder is at least one of the group of seasonal affective disorders (SAD), sleep disorders, circadian disruption, eating disorders, menstrual cycle disorders, non-specific alerting or performance deficits, hormone-sensitive cancers, or cardiovascular disorders.

V. CONCLUSION

In view of the above, Applicant maintains that all points raised by the Examiner relating to claims 2, 12, 14, 31 - 32, and 34 - 46 have been answered. Claims 28 - 30, 33, and 47 - 56 have been withdrawn for purposes of efficiency and not for purposes of patentability, and Applicants may resubmit them in a continuation application that Applicants may file while the current application is pending. Claims 2, 12, 14, 31 - 32, and 34 - 46 now presented are in condition for allowance.

Reconsideration and favorable action are earnestly solicited.

Date: 1/31/09

Respectfully Submitted,

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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2009 *(Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)*	Docket Number (Optional)
Application Number 09/853,428	Filed May 10, 2001
For Photoreceptor System for Melatonin Regulation and Phototherapy	
Art Unit 3739	Examiner Gibson, Roy Dean

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

		Fee	Small Entity Fee	
☐	One month (37 CFR 1.17(a)(1))	$130	$65	$
☐	Two months (37 CFR 1.17(a)(2))	$490	$245	$
☑	Three months (37 CFR 1.17(a)(3))	$1110	$555	$ 555.00
☐	Four months (37 CFR 1.17(a)(4))	$1730	$865	$
☐	Five months (37 CFR 1.17(a)(5))	$2350		

02/09/2009 LNGUYEN1 00000005 09853428
01 FC:2253 555.00 OP

☑ Applicant claims small entity status. See 37 CFR 1.27.

☑ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number _____.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).

☑ attorney or agent of record. Registration Number 42,218

☐ attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Signature — Date: January 31, 2009

Patricia A. Wenger — Typed or printed name

610-566-3040 — Telephone Number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☑ Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

OIPE IAP3
FEB 0 4 2009
PATENT & TRADEMARK OFFICE

PTO/SB/21 (01-09)
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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

Total Number of Pages in This Submission: 15

ENCLOSURES *(Check all that apply)*

- [ ] Fee Transmittal Form
  - [ ] Fee Attached
- [x] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [x] Extension of Time Request
- [ ] Express Abandonment Request
- [x] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- [ ] Proprietary Information
- [ ] Status Letter
- [x] Other Enclosure(s) (please Identify below):

check in the amount of $555.00; return postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Wenger Law Offices		
Signature			
Printed name	Patricia A. Wenger		
Date	February 2, 2009	Reg. No.	42,218

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Patricia A. Wenger	Date	February 2, 2009

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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PTO/SB/08a (01-09)
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Substitute for form 1449/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet 1 of 1

Complete if Known	
Application Number	09/853,428
Filing Date	May 10, 2001
First Named Inventor	Brainard
Art Unit	3739
Examiner Name	Gibson, Roy Dean
Attorney Docket Number	

U. S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number-Kind Code[2] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US- 3445153	05-20-1969	Marks et al.	
		US-			
		US-			
		US-			
		US-			
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		US-			

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3]-Number[4]-Kind Code[5] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T[6]

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. [1] Applicant's unique citation designation number (optional). [2] See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. [3] Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). [4] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [5] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [6] Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

PTO/SB/06 (07-06)
Approved for use through 1/31/2007. OMB 0651-0032
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 09/853,428	Filing Date 05/10/2001	☐ To be Mailed

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	SMALL ENTITY ☐ RATE ($)	FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A			N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A			N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A			N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	x $ =		OR	x $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	x $ =			x $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).						
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))							
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 02/04/2009	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	SMALL ENTITY RATE ($)	ADDITIONAL FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	* 32	Minus	** 32	= 0	x $ =		OR	x $52=	0
Independent (37 CFR 1.16(h))	* 3	Minus	***3	= 0	x $ =		OR	x $220=	0
☐ Application Size Fee (37 CFR 1.16(s))									
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
					TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	0

AMENDMENT	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)		RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	*	Minus	**	=	x $ =		OR	x $ =	
Independent (37 CFR 1.16(h))	*	Minus	***	=	x $ =		OR	x $ =	
☐ Application Size Fee (37 CFR 1.16(s))									
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
					TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

Legal Instrument Examiner:
/RUTH M. LLOYD/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

44321 7590 04/30/2009
PATRICIA A. WENGER
201 NORTH JACKSON STREET
MEDIA, PA 19063

EXAMINER
GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
3739	

MAIL DATE	DELIVERY MODE
04/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/853,428	BRAINARD, GEORGE	
	Examiner	Art Unit	
	Roy D. Gibson	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,12,14 and 28-56* is/are pending in the application.

4a) Of the above claim(s) *28-30,33 and 47-56* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,12,14,31,32 and 34-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/4/2009*.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.